SB 4 [SCS SB 4]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Raises Kansas City police salaries.

AN ACT to repeal sections 32.056, 84.480 and 84.510, RSMo 2000, relating to certain police officers, and to enact in lieu thereof three new sections relating to the same subject.

SECTION

A. Enacting clause.
32.056. Confidentiality of motor vehicle or driver registration records of county, state or federal parole officers or federal pretrial officers.
84.480. Chief of police — appointment — qualifications — compensation (Kansas City).
84.510. Police officers and officials — appointment — compensation (Kansas City).

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 32.056, 84.480 and 84.510, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 32.056, 84.480 and 84.510, to read as follows:

32.056. CONFIDENTIALITY OF MOTOR VEHICLE OR DRIVER REGISTRATION RECORDS OF COUNTY, STATE OR FEDERAL PAROLE OFFICERS OR FEDERAL PRETRIAL OFFICERS. — The department of revenue shall not release the home address or any other information contained in the department's motor vehicle or driver registration records regarding any person who is a county, state or federal parole officer or who is a federal pretrial officer **or who is a peace officer pursuant to section 590.100, RSMo,** based on a specific request for such information from any person. Any person who is a county, state or federal parole officer or who is a federal pretrial officer **or who is a peace officer pursuant to section 590.100, RSMo,** may notify the department of such status and the department shall protect the confidentiality of the records on such a person as required by this section. This section shall not prohibit the department from releasing information on a motor registration list pursuant to section 32.055 **or from releasing information on any officer who holds a class A, B or C commercial driver's license pursuant to the Motor Carrier Safety Improvement Act of 1999, as amended, 49 U.S.C. 31309**.

84.480. CHIEF OF POLICE — APPOINTMENT — QUALIFICATIONS — COMPENSATION (KANSAS CITY). — The board of police commissioners shall appoint a chief of police who shall be the chief police administrative and law enforcement officer of such cities. The chief of police shall be chosen by the board solely on the basis of his or her executive and administrative qualifications and his or her demonstrated knowledge of police science and administration with special reference to his or her actual experience in law enforcement leadership and the provisions of section 84.420. At the time of the appointment, the chief shall not be more than sixty years of age, shall have had at least five years' executive experience in a governmental police agency and shall be certified by a surgeon or physician to be in a good physical condition, and shall be a citizen of the United States and shall either be or become a citizen of the state of Missouri and resident of the city in which he or she is appointed as chief of police. In order to secure and retain the highest type of police leadership within the departments of such cities, the chief shall receive a salary of not less than **[**seventy-four thousand eight hundred seventy-seven**] eighty thousand two hundred eleven** dollars, nor more than **[**one hundred eight thousand six hundred eighty-eight**] one hundred fifty-one thousand two hundred ninety-six** dollars per annum.

84.510. POLICE OFFICERS AND OFFICIALS — APPOINTMENT — COMPENSATION (KANSAS CITY). — 1. For the purpose of operation of the police department herein created, the chief of police, with the approval of the board, shall appoint such number of police department employees, including police officers and civilian employees as the chief of police from time to time deems necessary.

2. The base annual compensation of police officers shall be as follows for the several ranks:

(1) Lieutenant colonels, not to exceed five in number, at not less than **[**sixty-seven thousand one hundred eighty-three**] seventy-one thousand nine hundred sixty- nine** dollars, nor more than **[**eighty-seven thousand five hundred eighty**] ninety-nine thousand six hundred sixty** dollars per annum each;

(2) Majors at not less than **[**sixty thousand three hundred seventy-one**] sixty-four thousand six hundred seventy-one** dollars, nor more than **[**seventy-eight thousand five hundred eighty-nine**] eighty-five thousand eight hundred forty-eight** dollars per annum each;

(3) Captains at not less than **[**fifty-three thousand four hundred forty-two**] fifty-nine thousand five hundred thirty-nine** dollars, nor more than **[**seventy-one thousand three hundred two**] eighty-one thousand seven hundred forty-four** dollars per annum each;

(4) Sergeants at not less than **[**forty-five thousand four hundred twenty-three**] forty-eight thousand six hundred fifty-nine** dollars, nor more than **[**sixty-two thousand five hundred twenty-one**] sixty-six thousand nine hundred seventy-two** dollars per annum each;

(5) Detectives and police officers at not less than **[**twenty-four thousand eight hundred seventy-one**] twenty-six thousand six hundred forty-three** dollars, nor more than **[**fifty-three thousand one hundred forty-two**] fifty-nine thousand four hundred twelve** dollars per annum each.

3. The board of police commissioners has the authority by resolution to effect a comprehensive pay schedule program to provide for step increases with separate pay rates within each rank, in the above-specified salary ranges from police officers through chief of police.

4. Officers assigned to wear civilian clothes in the performance of their regular duties may receive an additional seventy-five dollars per month clothing allowance. Uniformed officers may receive fifty dollars per month uniform maintenance allowance.

5. The chief of police, subject to the approval of the board, shall establish the total regular working hours for all police department employees, and the board has the power, upon recommendation of the chief, to pay additional compensation for all hours of service rendered in excess of the established regular working period, but the rate of overtime compensation shall not exceed one and one-half times the regular hourly rate of pay to which each member shall normally be entitled. No credit shall be given nor deductions made from payments for overtime for the purpose of retirement benefits.

6. The board of police commissioners, by majority affirmative vote, including the mayor, has the authority by resolution to authorize incentive pay in addition to the base compensation of police officers and detectives below the rank of sergeant as provided for in subsection 2 of this section, to be paid officers who they determine are assigned duties which require an extraordinary degree of skill, technical knowledge and ability, or which are highly demanding or unusual. No credit shall be given nor deductions made from these payments for the purpose of retirement benefits.

7. The board of police commissioners may effect programs to provide additional compensation for successful completion of academic work at an accredited college or university. No credit shall be given nor deductions made from these payments for the purpose of retirement benefits.

8. The additional pay increments provided in subsections 6 and 7 of this section shall not be considered a part of the base compensation of police officers and shall not exceed five percent of what the officer would otherwise be entitled to pursuant to subsections 2 and 3 of this section.

9. Not more than twenty-five percent of the officers in any rank below the rank of sergeant who are receiving the maximum rate of pay authorized by subsections 2 and 3 of this section

may receive the additional pay increments authorized by subsections 6 and 7 of this section at any given time. However, any officer receiving a pay increment provided pursuant to the provisions of subsections 6 and 7 of this section shall not be deprived of such pay increment as a result of the limitations of this subsection.

Approved June 26, 2001

SB 5 [SCS SB 5 & 21]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Revises Criminal Activity Forfeiture Act.

AN ACT to repeal sections 513.605, 513.607, 513.647 and 513.653, RSMo 2000, relating to the criminal activity forfeiture act, and to enact in lieu thereof four new sections relating to the same subject, with penalty provisions.

SECTION
A. Enacting clause.
513.605. Definitions.
513.607. Property subject to forfeiture — procedure — report required, when, contents — annual state auditor's report, contents — violations, penalty.
513.647. Transfer of property seized by state to federal agency, procedure — transfer not to be made unless violation is a felony — property owner may challenge, procedure.
513.653. Peace officers using federal forfeiture system, audit of federal seizure proceeds — copies provided to whom — violation, penalty.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 513.605, 513.607, 513.647 and 513.653, RSMo 2000, are repealed and four new sections enacted in lieu thereof, to be known as sections 513.605, 513.607, 513.647 and 513.653, to read as follows:

513.605. DEFINITIONS. — As used in sections 513.600 to 513.645, unless the context clearly indicates otherwise, the following terms mean:

(1) (a) "Beneficial interest":

a. The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

b. The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person;

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located;

(2) "Civil proceeding", any civil suit commenced by an investigative agency under any provision of sections 513.600 to 513.645;

(3) "Criminal activity" is the commission, attempted commission, conspiracy to commit, or the solicitation, coercion or intimidation of another person to commit any crime which is chargeable by indictment or information under the following Missouri laws:

(a) Chapter 195, RSMo, relating to drug regulations;

(b) Chapter 565, RSMo, relating to offenses against the person;

(c) Chapter 566, RSMo, relating to sexual offenses;

(d) Chapter 568, RSMo, relating to offenses against the family;

(e) Chapter 569, RSMo, relating to robbery, arson, burglary and related offenses;

(f) Chapter 570, RSMo, relating to stealing and related offenses;

(g) Chapter 567, RSMo, relating to prostitution;

(h) Chapter 573, RSMo, relating to pornography and related offenses;

(i) Chapter 574, RSMo, relating to offenses against public order;

(j) Chapter 575, RSMo, relating to offenses against the administration of justice;

(k) Chapter 491, RSMo, relating to witnesses;

(l) Chapter 572, RSMo, relating to gambling;

(m) Chapter 311, RSMo, but relating only to felony violations of this chapter committed by persons not duly licensed by the supervisor of liquor control;

(n) Chapter 571, RSMo, relating to weapons offenses;

(o) Chapter 409, RSMo, relating to regulation of securities;

(p) Chapter 301, RSMo, relating to registration and licensing of motor vehicles;

(4) "Criminal proceeding", any criminal prosecution commenced by an investigative agency under any criminal law of this state;

(5) "Investigative agency", the attorney general's office, or the office of any prosecuting attorney or circuit attorney;

(6) "Pecuniary value":

(a) Anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of one hundred dollars;

(7) "Real property", any estate or legal or equitable interest in land situated in this state or any interest in such real property, including, but not limited to, any lease or deed of trust upon such real property;

(8) **"Seizing agency", the agency which is the primary employer of the officer or agent seizing the property, including any agency in which one or more of the employees acting on behalf of the seizing agency is employed by the state of Missouri or any political subdivision of this state;**

(9) "Seizure", the point at which any law enforcement officer or agent discovers and exercises any control over property that an officer or agent has reason to believe was used or intended for use in the course of, derived from, or realized through criminal activity. Seizure includes but is not limited to preventing anyone found in possession of the property from leaving the scene of the investigation while in possession of the property;

(10) (a) "Trustee":

a. Any person who holds legal or record title to real property for which any other person has a beneficial interest; or

b. Any successor trustee or trustees to any of the foregoing persons;

(b) "Trustee" does not include the following:

a. Any person appointed or acting as a personal representative under chapter 475, RSMo, or under chapter 473, RSMo;

b. Any person appointed or acting as a trustee of any testamentary trust or as trustee of any indenture of trust under which any bonds are or are to be issued.

513.607. PROPERTY SUBJECT TO FORFEITURE — PROCEDURE — REPORT REQUIRED, WHEN, CONTENTS — ANNUAL STATE AUDITOR'S REPORT, CONTENTS — VIOLATIONS, PENALTY. — 1. All property of every kind**, including cash or other negotiable instruments,** used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture. Civil forfeiture shall be had by a civil procedure known as a CAFA forfeiture proceeding.

2. A CAFA forfeiture proceeding shall be governed by the Missouri rules of court, rules of civil procedure, except to the extent that special rules of procedure are stated herein.

3. **Any property seized by a law enforcement officer or agent shall not be disposed of pursuant to section 542.301, RSMo, or by the uniform disposition of unclaimed property act, sections 447.500 through 447.595, RSMo, unless the CAFA proceeding involving the seized property does not result in a judgment of forfeiture.**

4. In cases where the property is abandoned or unclaimed, an in rem CAFA forfeiture proceeding may be instituted by petition by the prosecuting attorney of the county in which the property is located or seized by the attorney general's office. The proceeding may be commenced before or after seizure of the property.

[4.**]** **5.** In lieu of, or in addition to, an in rem proceeding under subsection 3 of this section, the prosecuting attorney or attorney general may bring an in personam action for the forfeiture of property, which may be commenced by petition before or after the seizure of property.

[5.**]** **6.** (1) If the petition is filed before seizure, it shall state what property is sought to be forfeited, that the property is within the jurisdiction of the court, the grounds for forfeiture, and the names of all persons known to have or claim an interest in the property. The court shall determine ex parte whether there is reasonable cause to believe that the property is subject to forfeiture and that notice to those persons having or claiming an interest in the property prior to seizure would cause the loss or destruction of the property. If the court finds that reasonable cause does not exist to believe the property is subject to forfeiture, it shall dismiss the proceeding. If the court finds that reasonable cause does exist to believe the property is subject to forfeiture but there is not reasonable cause to believe that prior notice would result in loss or destruction, it shall order service on all persons known to have or claim an interest in the property prior to a further hearing on whether a writ of seizure should issue. If the court finds that there is reasonable cause to believe that the property is subject to forfeiture and to believe that prior notice would cause loss or destruction, it shall without any further hearing or notice issue a writ of seizure directing the sheriff of the county or other authorized law enforcement agency where the property is found to seize it.

(2) Seizure may be effected by a law enforcement officer authorized to enforce the criminal laws of this state prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within four days of the date of seizure, such seizure shall be reported by said officer to the prosecuting attorney of the county in which the seizure is effected or the attorney general; and if in the opinion of the prosecuting attorney or attorney general forfeiture is warranted, the prosecuting attorney or attorney general shall, within ten days after receiving notice of seizure, file a petition for forfeiture. The petition shall state, in addition to the information required in subdivision (1) of this subsection, the date and place of seizure. The burden of proof will be on the investigative agency to prove all allegations contained in the petition.

[6.**]** **7.** After the petition is filed or the seizure effected, whichever is later, every person known to have or claim an interest in the property shall be served, if not previously served, with a copy of the petition and a notice of seizure in the manner provided by the Missouri rules of court and rules of civil procedure. Service by publication may be ordered upon any party whose whereabouts cannot be determined or if there be unknown parties.

[7.**]** **8.** The prosecuting attorney or attorney general to whom the seizure is reported shall report annually by January thirty-first for the previous calendar year all seizures. Such report shall include the date, time, and place of seizure, the property seized, the estimated value of the property seized, the person or persons from whom the property was seized, the criminal charges filed, and the disposition of the seizure, forfeiture and criminal actions. The report shall be made to the director of the Missouri department of public safety and shall be considered an open record. **The prosecuting attorney or attorney general shall submit a copy of the report to**

the state auditor at the time the report is made to the director of the department of public safety.

9. The state auditor shall make an annual report compiling the data received from law enforcement, prosecuting attorneys and the attorney general, and shall submit the report regarding seizures for the previous calendar year to the general assembly annually by February twenty-eighth.

10. Intentional or knowing failure to comply with any reporting requirement contained in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand dollars.

513.647. TRANSFER OF PROPERTY SEIZED BY STATE TO FEDERAL AGENCY, PROCEDURE — TRANSFER NOT TO BE MADE UNLESS VIOLATION IS A FELONY — PROPERTY OWNER MAY CHALLENGE, PROCEDURE. — 1. No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal agency for forfeiture under federal law until the prosecuting attorney and the circuit judge of the county in which the property was seized first review the seizure and approve the transfer to a federal agency**, regardless of the identity of the seizing agency**. The prosecuting attorney and the circuit judge shall not approve any transfer unless it reasonably appears the activity giving rise to the investigation or seizure involves more than one state or **[**the nature of the investigation or seizure would be better pursued under federal forfeiture statutes**] unless it is reasonably likely to result in federal criminal charges being filed, based upon a written statement of intent to prosecute from the United States attorney with jurisdiction**. No transfer shall be made to a federal agency unless the violation would be a felony under Missouri law or federal law.

2. Prior to transfer, in an ex parte proceeding, the prosecuting attorney shall file with the court a statement setting forth the facts and circumstances of the event or occurrence which led to the seizure of the property and the parties involved, if known. The court shall certify the filing, and notify by mailing to the last known address of the property owner that his property is subject to being transferred to the federal government and further notify the property owner of his right to file a petition stating legitimate grounds for challenging the transfer. If within ninety-six hours after the filing of the statement by the prosecuting attorney, the property owner by petition shows by a preponderance of the evidence that the property should not be transferred to the federal government for forfeiture, the court shall delay such transfer until a hearing may be held. If the court orders a delay in transfer, no later than ten days after the filing of a petition under this section and sections 513.649 and 513.651, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the prosecutor has proved by a preponderance of the evidence that the investigation or seizure involved more than one state or that the nature of the investigation or seizure would be better pursued under the federal forfeiture statutes, the court shall order that the transfer shall be made.

513.653. PEACE OFFICERS USING FEDERAL FORFEITURE SYSTEM, AUDIT OF FEDERAL SEIZURE PROCEEDS — COPIES PROVIDED TO WHOM — VIOLATION, PENALTY. — **1.** Law enforcement agencies involved in using the federal forfeiture system under federal law shall be required at the end of their respective fiscal year to acquire an independent audit of the federal seizures and the proceeds received therefrom and provide this audit to their respective governing body. A copy of such audit shall be provided to the state auditor's office. This audit shall be paid for out of the proceeds of such federal forfeitures.

2. Intentional or knowing failure to comply with the audit requirement contained in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand dollars.

Approved May 17, 2001

SB 10 [HS HCS SCS SB 10]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Divorce judgments shall not expire; Internet government documents are not hearsay; blind pensions not state debt for estate.

AN ACT to repeal sections 511.350, 511.360 and 516.350, RSMo 2000, relating to division of benefits in dissolution of marriage judgments, and to enact in lieu thereof three new sections relating to the same subject.

SECTION
A. Enacting clause.
511.350. Liens on real estate established by judgment or decrees in courts of record, exception — associate circuit court, procedure required.
511.360. Commencement, extent and duration of lien.
516.350. Judgments presumed to be paid, when — presumption, how rebutted — inclusion in the automated child support system.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 511.350, 511.360 and 516.350, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 511.350, 511.360 and 516.350, to read as follows:

511.350. LIENS ON REAL ESTATE ESTABLISHED BY JUDGMENT OR DECREES IN COURTS OF RECORD, EXCEPTION — ASSOCIATE CIRCUIT COURT, PROCEDURE REQUIRED. — 1. Judgments and decrees rendered by the supreme court, by any United States district or circuit court held within this state, by any district of the court of appeals, by any circuit court and any probate division of the circuit court, except judgments and decrees rendered by associate, small claims and municipal divisions of the circuit courts, shall be liens on the real estate of the person against whom they are rendered, situate in the county for which or in which the court is held.

2. Judgments and decrees rendered by the associate divisions of the circuit courts shall not be liens on the real estate of the person against whom they are rendered until such judgments or decrees are filed with the clerk of the circuit court pursuant to sections **[**517.770**]** **517.141** and **[**517.780**]** **517.151**, RSMo.

3. Judgments and decrees rendered by the small claims and municipal divisions of the circuit court shall not constitute liens against the real estate of the person against whom they are rendered.

511.360. COMMENCEMENT, EXTENT AND DURATION OF LIEN. — The lien of a judgment or decree shall extend as well to the real estate acquired after the rendition thereof, as to that which was owned when the judgment or decree was rendered. Such liens shall commence on the day of the rendition of the judgment, and shall continue for **[**three**]** **ten** years, subject to be revived as herein provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered.

516.350. JUDGMENTS PRESUMED TO BE PAID, WHEN — PRESUMPTION, HOW REBUTTED — INCLUSION IN THE AUTOMATED CHILD SUPPORT SYSTEM. — 1. Every judgment, order or decree of any court of record of the United States, or of this or any other state, territory or country, except for any judgment, order, or decree awarding child support or

maintenance **or dividing pension, retirement, life insurance, or other employee benefits in connection with a dissolution of marriage, legal separation or annulment** which mandates the making of payments over a period of time **or payments in the future**, shall be presumed to be paid and satisfied after the expiration of ten years from the date of the original rendition thereof, or if the same has been revived upon personal service duly had upon the defendant or defendants therein, then after ten years from and after such revival, or in case a payment has been made on such judgment, order or decree, and duly entered upon the record thereof, after the expiration of ten years from the last payment so made, and after the expiration of ten years from the date of the original rendition or revival upon personal service, or from the date of the last payment, such judgment shall be conclusively presumed to be paid, and no execution, order or process shall issue thereon, nor shall any suit be brought, had or maintained thereon for any purpose whatever. An action to emancipate a child, and any personal service or order rendered thereon, shall not act to revive the support order.

2. In any judgment, order, or decree awarding child support or maintenance, each periodic payment shall be presumed paid and satisfied after the expiration of ten years from the date that periodic payment is due, unless the judgment has been otherwise revived as set out in subsection 1 of this section. This subsection shall take effect as to all such judgments, orders, or decrees which have not been presumed paid pursuant to subsection 1 of this section as of August 31, 1982.

3. In any judgment, order, or decree dividing pension, retirement, life insurance, or other employee benefits in connection with a dissolution of marriage, legal separation or annulment, each periodic payment shall be presumed paid and satisfied after the expiration of ten years from the date that periodic payment is due, unless the judgment has been otherwise revived as set out in subsection 1 of this section. This subsection shall take effect as to all such judgments, orders, or decrees which have not been presumed paid pursuant to subsection 1 of this section as of August 28, 2001.

[3.**]** **4.** In any judgment, order or decree awarding child support or maintenance, payment duly entered on the record as provided in subsection 1 of this section shall include recording of payments or credits in the automated child support system created pursuant to chapter 454, RSMo, by the division of child support enforcement or payment center pursuant to chapter 454, RSMo.

Approved June 13, 2001

SB 13 [SCS SB 13]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Exempts retired members of the armed services from paying personalized license plate fee.

AN ACT to repeal section 301.144 as enacted by house committee substitute for senate substitute for senate bill no. 3, eighty- eighth general assembly, first regular session, section 301.144 as enacted by conference committee substitute for house substitute for house committee substitute for senate substitute for senate bill no. 70, eighty-eighth general assembly, first regular session and section 301.441, relating to motor vehicle license plates, and to enact in lieu thereof two new sections relating to the same subject.

SECTION
A. Enacting clause.
301.144. Personalized license plates, appearance, fees — new plates every three years without charge — obscene plates prohibited — amateur radio operators, plates, how marked — repossessed vehicles, placards — retired U.S. military plates, how marked.
301.144. Personalized license plates, appearance, fees — new plates every three years without charge — obscene plates prohibited — amateur radio operators, plates, how marked — repossessed vehicles, placards — retired U.S. military plates, how marked.
301.441. Retired members of the United States military special license plates — application — proof required — license, how marked.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 301.144 as enacted by house committee substitute for senate substitute for senate bill no. 3, eighty- eighth general assembly, first regular session, section 301.144 as enacted by conference committee substitute for house substitute for house committee substitute for senate substitute for senate bill no. 70, eighty-eighth general assembly, first regular session, and section 301.441, are repealed and two new sections enacted in lieu thereof, to be known as sections 301.144 and 301.441, to read as follows:

301.144. PERSONALIZED LICENSE PLATES, APPEARANCE, FEES — NEW PLATES EVERY THREE YEARS WITHOUT CHARGE — OBSCENE PLATES PROHIBITED — AMATEUR RADIO OPERATORS, PLATES, HOW MARKED — REPOSSESSED VEHICLES, PLACARDS — RETIRED U.S. MILITARY PLATES, HOW MARKED. — 1. The director of revenue shall establish and issue special personalized license plates containing letters or numbers or combinations of letters and numbers, not to exceed six characters in length. **Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130.** Any person desiring to obtain a special personalized license plate for any motor vehicle other than a commercial motor vehicle licensed for more than twelve thousand pounds shall apply to the director of revenue on a form provided by the director and shall pay a fee of fifteen dollars in addition to the regular registration fees. The director of revenue shall issue rules and regulations setting the standards and establishing the procedure for application for and issuance of the special personalized license plates and shall provide a deadline each year for the applications. **[**No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.**]** **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.** No two owners shall be issued identical plates. An owner shall make a new application and pay a new fee each year **[**he**]** **such owner** desires to obtain or retain special personalized license plates; however, notwithstanding the provisions of subsection 8 of section 301.130 to the contrary, the director shall allow the special personalized license plates to be replaced with new plates every three years without any additional charge, above the fee established in this section, to the renewal applicant. Any person currently in possession of an approved personalized license plate shall have first priority on that particular plate for each of the following years that timely and appropriate application is made.

2. No personalized license plates shall be issued containing any letters, numbers or combination of letters and numbers which are obscene, profane, inflammatory or contrary to public policy. The director may recall any personalized license plates, including those issued

prior to August 28, 1992, if **[**he**] the director** determines that the plates are obscene, profane, inflammatory or contrary to public policy. Where the director recalls such plates **[**under**] pursuant to** the provisions of this subsection, **[**he**] the director** shall reissue personalized license plates to the owner of the motor vehicle for which they were issued at no charge, if the new plates proposed by the owner of the motor vehicle meet the standards established **[**under**] pursuant to** this section. Nothing contained in this subsection shall be interpreted to prohibit the use of license plates, which are no longer valid for registration purposes, as collector's items or for decorative purposes.

3. The director may also establish categories of **[**specialized personalized**] special** license plates from which license plates may be issued. Any such person**, other than a person exempted from the additional fee pursuant to subsection 6 of this section,** that desires a **[**special**]** personalized **special** license plate from any such category shall pay the same additional fee and make the same kind of application as that required by subsection 1 of this section, and the director shall issue such plates in the same manner as other **[**special**]** personalized **special** license plates are issued.

4. The director of revenue shall issue to residents of the state of Missouri who hold an unrevoked and unexpired official amateur radio license issued by the Federal Communications Commission, upon application and upon payment of the additional fee specified in subsection 1 of this section, **[**special**] except for a person exempted from the additional fee pursuant to subsection 6 of this section,** personalized **special** license plates bearing the official amateur radio call letters assigned by the Federal Communications Commission to the applicant. The application shall be accompanied by an affidavit stating that the applicant has an unrevoked and unexpired amateur radio license issued by the Federal Communications Commission and the official radio call letters assigned by the Federal Communications Commission to the applicant.

5. Notwithstanding any other provision to the contrary, any business **[**listed in subsection 1 of section 301.256**]** that repossesses motor vehicles or trailers and sells or otherwise disposes of them shall be issued a placard displaying the word "Repossessed", provided such business pays the fees presently required of a manufacturer, distributor, or dealer in subsection 1 of section 301.253. Such placard shall bear a number and shall be in such form as the director of revenue shall determine, and shall be only used for demonstrations when displayed substantially as provided for number plates on the rear of the motor vehicle or trailer.

6. Notwithstanding any provision of law to the contrary, any person who has retired from any branch of the United States armed forces or reserves, the United States Coast Guard or reserve, the United States Merchant Marines or reserve, the National Guard, or any subdivision of any such services shall be exempt from the additional fee required for personalized license plates issued pursuant to section 301.441. As used in this subsection, "retired" means having served twenty or more years in the appropriate branch of service and having received an honorable discharge.

[301.144. PERSONALIZED LICENSE PLATES, APPEARANCE, FEES — NEW PLATES EVERY THREE YEARS WITHOUT CHARGE — OBSCENE PLATES PROHIBITED — AMATEUR RADIO OPERATORS, PLATES, HOW MARKED — REPOSSESSED VEHICLES, PLACARDS — RETIRED U.S. MILITARY PLATES, HOW MARKED. — 1. The director of revenue shall establish and issue special personalized license plates containing letters or numbers or combinations of letters and numbers. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Any person desiring to obtain a special personalized license plate for any motor vehicle other than a commercial motor vehicle licensed for more than twelve thousand pounds shall apply to the director of revenue on a form provided by the director and shall pay a fee of fifteen dollars in addition to the regular registration fees. The director of revenue shall issue rules and regulations setting the standards and establishing the procedure for application for and issuance of the special personalized license plates and shall provide a deadline

each year for the applications. No rule or regulation promulgated pursuant to this section shall become effective until approved by the joint committee on administrative rules. No two owners shall be issued identical plates. An owner shall make a new application and pay a new fee each year he desires to obtain or retain special personalized license plates; however, notwithstanding the provisions of subsection 8 of section 301.130 to the contrary, the director shall allow the special personalized license plates to be replaced with new plates every three years without any additional charge, above the fee established in this section, to the renewal applicant. Any person currently in possession of an approved personalized license plate shall have first priority on that particular plate for each of the following years that timely and appropriate application is made.

2. No personalized license plates shall be issued containing any letters, numbers or combination of letters and numbers which are obscene, profane, inflammatory or contrary to public policy. The director may recall any personalized license plates, including those issued prior to August 28, 1992, if he determines that the plates are obscene, profane, inflammatory or contrary to public policy. Where the director recalls such plates under the provisions of this subsection, he shall reissue personalized license plates to the owner of the motor vehicle for which they were issued at no charge, if the new plates proposed by the owner of the motor vehicle meet the standards established under this section. Nothing contained in this subsection shall be interpreted to prohibit the use of license plates, which are no longer valid for registration purposes, as collector's items or for decorative purposes.

3. The director may also establish categories of specialized personalized license plates from which license plates may be issued. Any such person that desires a special personalized license plate from any such category shall pay the same additional fee and make the same kind of application as that required by subsection 1 of this section, and the director shall issue such plates in the same manner as other special personalized license plates are issued.

4. The director of revenue shall issue to residents of the state of Missouri who hold an unrevoked and unexpired official amateur radio license issued by the Federal Communications Commission, upon application and upon payment of the additional fee specified in subsection 1 of this section, special personalized license plates bearing the official amateur radio call letters assigned by the Federal Communications Commission to the applicant. The application shall be accompanied by an affidavit stating that the applicant has an unrevoked and unexpired amateur radio license issued by the Federal Communications Commission and the official radio call letters assigned by the Federal Communications Commission to the applicant.

5. Notwithstanding any other provision to the contrary, any business listed in subsection 1 of section 301.570 that repossesses motor vehicles or trailers and sells or otherwise disposes of them shall be issued a placard displaying the word "Repossessed", provided such business pays the fees presently required of a manufacturer, distributor, or dealer in section 301.560. Such placard shall bear a number and shall be in such form as the director of revenue shall determine, and shall be only used for demonstrations when displayed substantially as provided for number plates on the rear of the motor vehicle or trailer.**]**

301.441. RETIRED MEMBERS OF THE UNITED STATES MILITARY SPECIAL LICENSE PLATES — APPLICATION — PROOF REQUIRED — LICENSE, HOW MARKED. — Any person who is a retired member of the United States Army, Navy, Air Force, Marine Corps or Coast Guard may apply for issuance of special motor vehicle license plates for any passenger motor vehicle subject to the registration fees provided in section 301.055, or for a nonlocal property carrying commercial motor vehicle licensed for a gross weight of nine thousand one pounds to twelve thousand pounds as provided in section 301.057, whether such vehicle is owned solely or jointly. No additional fee shall be charged for a set of special license plates issued pursuant to this section. **Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates issued pursuant to this section.** Such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of retired status from that particular branch of the United

States armed forces as the director may require. The plates shall have a white background with a blue and red configuration at the discretion of the advisory committee established in section 301.129. **Such plates shall bear the insignia of the respective branch the applicant served in.** The director shall then issue license plates bearing the words "RETIRED MILITARY" in preference to the words "SHOW-ME STATE" in a form prescribed by the advisory committee established in section 301.129. Such license plates shall be made with fully reflective material, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130.

Approved June 7, 2001

SB 25 [SB 25]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Removes prohibition on collection of tuition by the University of Missouri.

AN ACT to repeal section 172.360, RSMo 2000, relating to tuition at the University of Missouri, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
172.360. Students admissible — tuition and fees.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 172.360, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 172.360, to read as follows:

172.360. STUDENTS ADMISSIBLE — TUITION AND FEES. — All youths, resident of the state of Missouri, over the age of sixteen years, shall be admitted to all the privileges and advantages of the various classes of all the departments of the University of the State of Missouri **[**without payment of tuition**]**; provided, that each applicant for admission therein shall possess such scholastic attainments and mental and moral qualifications as shall be prescribed in rules adopted and established by the board of curators; and provided further, that **[**nothing herein enacted shall be construed to prevent the board of curators from collecting reasonable tuition fees in the professional departments, and the necessary fees for maintenance of the laboratories in all departments of the university, and establishing such other reasonable fees for library, hospital, incidental expenses or late registration as they may deem necessary**] the board of curators may charge and collect reasonable tuition and other fees necessary for the maintenance and operation of all departments of the university, as they may deem necessary**.

Approved June 8, 2001

SB 48 [CCS HS HCS SS SCS SB 48]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Adds the Department of Mental Health's employee disqualification list to the Family Care Safety Registry.

AN ACT to repeal sections 210.001, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.930, 210.936, 453.073, 630.170 and 630.405, RSMo 2000, and to enact in lieu thereof fifteen new sections relating to the family care safety registry, with penalty provisions.

SECTION

A. Enacting clause.
210.001. Department of social services to meet needs of homeless, dependent and neglected children — only certain regional child assessment centers funded.
210.900. Definitions.
210.903. Family care safety registry and access line established, contents.
210.906. Registration form, contents — violation, penalty — fees — voluntary registration permitted, when.
210.909. Department duties — information included in registry, when — registrant notification.
210.915. Departmental collaboration on registry information — rulemaking authority.
210.921. Release of registry information, when — limitations of disclosure — immunity from liability, when.
210.922. Use of registry information by the department, when.
210.927. Annual report, when, contents.
210.930. Report to general assembly, when, content.
210.936. Registry information deemed public record.
453.073. Subsidy to adopted child — determination of — how paid — written agreement
630.170. Disqualification for employment because of conviction — appeal process — registry maintained, when.
630.405. Purchase of services, procedure — commissioner of administration to cooperate — rules, procedure.
1. Child abuse, custody and neglect commission created, members, terms — reports — expiration date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 210.001, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.927, 210.930, 210.936, 453.073, 630.170 and 630.405, RSMo 2000, are repealed and fifteen new sections enacted in lieu thereof, to be known as sections 210.001, 210.900, 210.903, 210.906, 210.909, 210.915, 210.921, 210.922, 210.927, 210.930, 210.936, 453.073, 630.170, 630.405 and 1, to read as follows:

210.001. DEPARTMENT OF SOCIAL SERVICES TO MEET NEEDS OF HOMELESS, DEPENDENT AND NEGLECTED CHILDREN — ONLY CERTAIN REGIONAL CHILD ASSESSMENT CENTERS FUNDED. — 1. The department of social services shall address the needs of homeless, dependent and neglected children in the supervision and custody of the division of family services and to their families-in-conflict by:

(1) Serving children and families as a unit in the least restrictive setting available and in close proximity to the family home, consistent with the best interests and special needs of the child;

(2) Insuring that appropriate social services are provided to the family unit both prior to the removal of the child from the home and after family reunification;

(3) Developing and implementing preventive and early intervention social services which have demonstrated the ability to delay or reduce the need for out-of-home placements and ameliorate problems before they become chronic.

2. The department of social services shall fund only regional child assessment centers known as:

(1) The St. Louis City child assessment center;

(2) The St. Louis County child assessment center;

(3) The Jackson County child assessment center;

(4) The Buchanan County child assessment center;

(5) The Greene County **and Lakes Area** child assessment center;

(6) The Boone County child assessment center;

(7) The Joplin child assessment center;
(8) The St. Charles County child assessment center;
(9) The Jefferson County child assessment center; **[**and**]**
(10) The Pettis County child assessment center**; and**
(11) The southeast Missouri child assessment center.

210.900. DEFINITIONS. — 1. Sections 210.900 to 210.936 shall be known and may be cited as the "Family Care Safety Act".

2. As used in sections 210.900 to 210.936, the following terms shall mean:

(1) "Child-care provider", any licensed or license-exempt child-care home, any licensed or license-exempt child-care center, child-placing agency, residential care facility for children, group home, foster family group home, foster family home, employment agency that refers a child-care worker to parents or guardians as defined in section 289.005, RSMo. The term "child-care provider" does not include summer camps or voluntary associations designed primarily for recreational or educational purposes;

(2) "Child-care worker", any person who is employed by a child-care provider, or receives state or federal funds, either by direct payment, reimbursement or voucher payment, as remuneration for child-care services;

(3) "Department", the department of health;

(4) "Elder-care provider", any operator licensed pursuant to chapter 198, RSMo, **or any person, corporation, or association who provides in-home services under contract with the division of aging,** or any employer of nurses or nursing assistants of home health agencies licensed pursuant to sections 197.400 to 197.477, RSMo, or any nursing assistants employed by a hospice pursuant to sections 197.250 to 197.280, RSMo, or that portion of a hospital for which subdivision (3) of subsection 1 of section 198.012, RSMo, applies;

(5) "Elder-care worker", any person who is employed by an elder-care provider, or who receives state or federal funds, either by direct payment, reimbursement or voucher payment, as remuneration for elder-care services;

(6) "Patrol", the Missouri state highway patrol;

(7) "Employer", any child care provider, elder care provider, or personal care provider as defined in this section;

[(7)**] (8) "Personal-care attendant" or "personal-care worker", a person who performs routine services or supports necessary for a person with a physical or mental disability to enter and maintain employment or to live independently;**

(9) "Personal-care provider", any person, corporation, or association who provides personal care services or supports under contract with the department of mental health, the division of aging, the department of health or the department of elementary and secondary education;

(10) "Related child care", child care provided only to a child or children by such child's or children's grandparents, great-grandparents, aunts or uncles, or siblings living in a residence separate from the child or children;

[(8)**] (11)** "Related elder care", care provided only to an elder by an adult child, a spouse, a grandchild, a great-grandchild or a sibling of such elder.

210.903. FAMILY CARE SAFETY REGISTRY AND ACCESS LINE ESTABLISHED, CONTENTS. — 1. To protect children **[**and**],** the elderly**, and disabled individuals** in this state, and to promote family and community safety by providing information concerning family caregivers, there is hereby established within the department of health a "Family Care Safety Registry and Access Line" which shall be available by January 1, 2001.

2. The family care safety registry shall contain information on child-care workers' **[**and**],** elder-care workers'**, and personal-care workers'** background and on child-care **[**and**],** elder-care **and personal care** providers through:

(1) The patrol's criminal record check system pursuant to section 43.540, RSMo, including state and national information, to the extent possible;

(2) Probable cause findings of abuse and neglect pursuant to sections 210.109 to 210.183 **and, as of January 1, 2003, financial exploitation of the elderly or disabled, pursuant to section 570.145, RSMo**;

(3) The division of aging's employee disqualification list pursuant to section 660.315, RSMo;

(4) **As of January 1, 2003, the department of mental health's employee disqualification registry;**

(5) Foster parent licensure denials, revocations and **involuntary** suspensions pursuant to section 210.496;

[(5)**]** **(6)** Child-care facility license denials, revocations and suspensions pursuant to sections 210.201 to 210.259; and

[(6)**]** **(7)** Residential living facility and nursing home license denials, revocations, suspensions and probationary status pursuant to chapter 198, RSMo.

210.906. REGISTRATION FORM, CONTENTS — VIOLATION, PENALTY — FEES — VOLUNTARY REGISTRATION PERMITTED, WHEN. — 1. Every child-care worker or elder-care worker hired on or after January 1, 2001, **or personal care worker hired on or after January 1, 2002,** shall complete a registration form provided by the department. The department shall make such forms available no later than January 1, 2001, and may, by rule, determine the specific content of such form, but every form shall:

(1) Request the valid Social Security number of the applicant;

(2) Include information on the person's right to appeal the information contained in the registry pursuant to section 210.912;

(3) Contain the signed consent of the applicant for the background checks required pursuant to this section; and

(4) Contain the signed consent for the release of information contained in the background check for employment purposes only.

2. **[**Any person**] Every child-care worker or elder-care worker** hired on or after January 1, 2001, **and every personal care worker hired on or after January 1, 2002,** shall complete a registration form within fifteen days of the beginning of such person's employment. Any person employed as a child-care **[**worker or**],** elder-care **or personal-care** worker who fails to submit a completed registration form to the department of health as required by sections 210.900 to 210.936 without good cause, as determined by the department, is guilty of a class B misdemeanor.

3. The costs of the criminal background check may be paid by the individual applicant, or by the provider if the applicant is so employed, or for those applicants receiving public assistance, by the state through the terms of the self-sufficiency pact pursuant to section 208.325, RSMo. Any moneys remitted to the patrol for the costs of the criminal background check shall be deposited to the credit of the criminal record system fund as required by section 43.530, RSMo.

4. Any person not required to register pursuant to the provisions of sections 210.900 to 210.936 may also be included in the registry if such person voluntarily applies to the department for registration and meets the requirements of this section and section 210.909, including submitting to the background checks in subsection 1 of section 210.909.

5. The provisions of sections 210.900 to 210.936 shall not extend to related child care **[**and**],** related elder care **or related personal-care**.

210.909. DEPARTMENT DUTIES — INFORMATION INCLUDED IN REGISTRY, WHEN — REGISTRANT NOTIFICATION. — 1. Upon submission of a completed registration form by a child-care worker **[**or**],** elder-care worker **or personal-care attendant**, the department, **[**in coordination with the department of social services,**]** shall:

(1) Determine if a probable cause finding of child abuse or neglect involving the applicant has been recorded pursuant to **[**section 210.145**]** **sections 210.109 to 210.183 and, as of January 1, 2003, if there is a probable cause finding of financial exploitation of the elderly or disabled pursuant to section 570.145, RSMo**;

(2) Determine if the applicant has been refused licensure or has experienced **involuntary** licensure suspension or revocation pursuant to section 210.496;

(3) Determine if the applicant has been placed on the employee disqualification list pursuant to section 660.315, RSMo;

(4) As of January 1, 2003, determine if the applicant is listed on the department of mental health's employee disqualification registry;

[(4)**]** **(5)** Determine through a request to the patrol pursuant to section 43.540, RSMo, whether the applicant has any conviction, plea of guilty or nolo contendere, or a suspended execution of sentence to a **[**felony**]** charge of any offense pursuant to chapters 198, 334, 560, 565, 566, 568, 569, 573, 575 and 578, RSMo; and

[(5)**]** **(6)** If the background check involves a provider, determine if a facility has been refused licensure or has experienced licensure suspension, revocation or probationary status pursuant to sections 210.201 to 210.259 or chapter 198, RSMo.

2. Upon completion of the background check described in subsection 1 of this section, the department shall include information in the registry for each registrant as to whether any **[**felony**]** convictions, employee disqualification listings**, [**pursuant to section 660.315, RSMo,**]** **registry listings,** probable cause findings, pleas of guilty or nolo contendere, or license denial, revocation or suspension have been documented through the records checks authorized pursuant to the provisions of sections 210.900 to 210.936.

3. The department shall notify such registrant in writing of the results of the determination recorded on the registry pursuant to this section.

210.915. DEPARTMENTAL COLLABORATION ON REGISTRY INFORMATION — RULEMAKING AUTHORITY. — The department of corrections, the department of public safety **[**and**],** the department of social services **and the department of mental health** shall collaborate with the department to compare records on child-care **[**and**],** elder-care **and personal-care** workers, and the records of persons with criminal convictions and the background checks pursuant to subdivisions (1) to (6) of subsection 2 of section 210.903, and to enter into any interagency agreements necessary to facilitate the receipt of such information and the ongoing updating of such information. The department**[**, in coordination with the department of social services,**]** shall promulgate rules and regulations concerning such updating, including subsequent background reviews as listed in subsection 1 of section 210.909.

210.921. RELEASE OF REGISTRY INFORMATION, WHEN — LIMITATIONS OF DISCLOSURE — IMMUNITY FROM LIABILITY, WHEN. — 1. The department shall not provide any registry information pursuant to this section unless the department obtains **[**by asking for**]** the name and address of the person calling, and determines that the inquiry is for employment purposes only. For purposes of sections 210.900 to 210.936, "employment purposes" includes direct employer-employee relationships, prospective employer-employee relationships, and screening and interviewing of persons or facilities by those persons contemplating the placement of an individual in a **[**child-or**]** **child-care,** elder-care **or personal-care** setting. Disclosure of background information concerning a given applicant recorded by the department in the registry shall be limited to:

(1) Confirming whether the individual is listed in the registry; and

(2) Indicating whether the individual has been listed or named in any of the background checks listed in subsection 2 of section 210.903. If such individual has been so listed, the department of health shall only disclose the name of the background check in which the individual has been identified. **With the exception of any agency licensed by the state to**

provide child care, elder care or personal care which shall receive specific information immediately if requested, any specific information related to such background check shall only be disclosed after the department has received a signed request from the person calling, with the person's name, address and reason for requesting the information.

2. Any person requesting registry information shall be informed that the registry information provided pursuant to this section consists only of information relative to the state of Missouri and does not include information from other states or information that may be available from other states.

3. Any person who uses the information obtained from the registry for any purpose other than that specifically provided for in sections 210.900 to 210.936 is guilty of a class B misdemeanor.

4. When any registry information is disclosed pursuant to subdivision (2) of subsection 1 of this section, the department shall notify the registrant of the name and address of the person making the inquiry.

5. The department of health staff providing information pursuant to sections 210.900 to 210.936 shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions; provided, however, any department of health staff person who releases registry information in bad faith or with ill intent shall not have immunity from any liability, civil or criminal. Any such person shall have the same immunity with respect to participation in any judicial proceeding resulting from the release of registry information. The department is prohibited from selling the registry or any portion of the registry for any purpose including "employment purposes" as defined in subsection 1 of this section.

210.922. USE OF REGISTRY INFORMATION BY THE DEPARTMENT, WHEN. — The department may use the registry information to carry out the duties assigned to the department pursuant to this chapter and chapters 190, 195, 197, 198 and 660, RSMo.

210.927. ANNUAL REPORT, WHEN, CONTENTS. — The department of health shall make an annual report, no later than July first of each year, to the speaker of the house of representatives and the president pro tem of the senate on the operation of the family care safety registry and toll-free telephone service, including data on the number of information requests received from the public, identification of any barriers encountered in administering the provisions of sections 210.900 to 210.936, recommendations for removing or minimizing the barriers so identified, and any recommendations for improving the delivery of information on child-care **[**workers and**],** elder-care **and personal-care** workers to the public.

210.930. REPORT TO GENERAL ASSEMBLY, WHEN, CONTENT. — By January 1, 2001, the department shall provide a report to the speaker of the house and president pro tem of the senate with recommendations on:

(1) Ensuring that thorough background checks are conducted on all providers pursuant to sections 210.900 to 210.936 without duplicating background checks that are required or have been conducted pursuant to other provisions in state law;

(2) Ensuring that data obtained from background checks which are currently available or may be required by law after August 28, 1999, are included in the registry;

(3) The feasibility of transferring the responsibility of conducting background checks on providers to the registry;

(4) **[**Providing information and access to the registry for personal care attendants for the disabled;

(5)**]** Including a national screening process on a voluntary and mandatory basis within the registry; and

[(6)**]** **(5)** Effecting Internet access to the registry.

210.936. REGISTRY INFORMATION DEEMED PUBLIC RECORD. — For purposes of providing background information pursuant to sections 210.900 to 210.936, reports and related information pursuant to sections 198.070 and 198.090, RSMo, **sections** 210.109 to 210.183**, section 630.170, RSMo, and section 660.317, RSMo,** and sections 660.300 to 660.315, RSMo, shall be deemed public records.

453.073. SUBSIDY TO ADOPTED CHILD — DETERMINATION OF — HOW PAID — WRITTEN AGREEMENT — 1. The division of family services is authorized to grant a subsidy to a child in one of the forms of allotment defined in section 453.065. Determination of the amount of monetary need is to be made by the division at the time of placement, if practicable, and in reference to the needs of the child, including consideration of the physical and mental condition, **and** age **[**and racial and ethnic background**]** of the child in each case; provided, however, that the subsidy amount shall not exceed the expenses of foster care and medical care for foster children paid under the homeless, dependent and neglected foster care program.

2. The subsidy shall be paid for children who have been in the care and custody of the division of family services under the homeless, dependent and neglected foster care program. In the case of a child who has been in the care and custody of a private child-caring or child-placing agency or in the care and custody of the division of youth services or the department of mental health, a subsidy shall be available from the division of family services subsidy program in the same manner and under the same circumstances and conditions as provided for a child who has been in the care and custody of the division of family services.

3. Within thirty days after the authorization for the grant of a subsidy by the division of family services, a written agreement shall be entered into by the division and the parents. The agreement shall set forth the following terms and conditions:

(1) The type of allotment;

(2) The amount of assistance payments;

(3) The services to be provided;

(4) The time period for which the subsidy is granted, if that period is reasonably ascertainable;

(5) The obligation of the parents to inform the division when they are no longer providing support to the child or when events affect the subsidy eligibility of the child;

(6) The eligibility of the child for Medicaid.

[4. In the case that the subsidized family moves from the state of Missouri, the granted subsidy shall remain in force as stipulated in the allotment agreement, as long as the adopting family follows the established requirements and, provided further, that a subsidized family which has moved its residence from the state of Missouri shall, as a condition for the continuance of the granted subsidy, submit to the division of family services by the thirtieth day of June of each year, on a form to be provided by such division, a statement of the amounts paid for expenses for the care and maintenance of the adopted child in the preceding year. If the subsidized family fails to submit such form by the thirtieth day of June of any year, payments under the provisions of sections 453.065 to 453.074 to a family which has moved its residence from the state of Missouri shall cease.**]**

630.170. DISQUALIFICATION FOR EMPLOYMENT BECAUSE OF CONVICTION — APPEAL PROCESS — REGISTRY MAINTAINED, WHEN. — 1. A person convicted of any crime **[**under**]** **pursuant to** section 630.155 or 630.160 shall be disqualified from holding any position in any public or private facility or day program operated, funded or licensed by the department or in any mental health facility or mental health program in which people are admitted on a voluntary or involuntary basis or are civilly detained pursuant to chapter 632, RSMo.

2. A person convicted of any felony offense against persons as defined in chapter 565, RSMo; of any felony sexual offense as defined in chapter 566, RSMo; of any felony offense defined in section 568.045, 568.050, 568.060, 569.020, 569.030, 569.040 or 569.050, RSMo,

or of an equivalent felony offense shall be disqualified from holding any direct-care position in any public or private facility, day program, residential facility or specialized service operated, funded or licensed by the department or any mental health facility or mental health program in which people are admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

3. Any person disqualified **[**under**] pursuant to** the provisions of subsection 1 or 2 of this section may appeal the disqualification to the director of the department or the director's designee. The request shall be written and may not be made more than once every twelve months. The request may be granted by the director or designee if in the judgment of the director or designee a clear showing has been made by written submission only, that the person will not commit any additional acts for which the person had originally been disqualified for or any other acts that would be harmful to a patient, resident or client of a facility, program or service. The director or designee may grant the appeal subject to any conditions deemed appropriate and failure to comply with such terms may result in the person again being disqualified. Decisions by the director or designee **[**under**] pursuant to** the provisions of this subsection shall not be subject to appeal. The right to appeal **[**under**] pursuant to** this subsection shall not apply to persons convicted of any crime **[**under**] pursuant to** the provisions of chapter 566 or 568, RSMo, or section 565.020 or 565.021, RSMo.

4. The department may maintain a disqualification registry and place on the registry the names of any persons who have been finally determined by the department to be disqualified pursuant to this section, or who have had administrative substantiations made against them for abuse or neglect pursuant to department rule. Such list shall reflect that the person is barred from holding any position in any public or private facility or day program operated, funded or licensed by the department, or any mental health facility or mental health program in which persons are admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo.

630.405. PURCHASE OF SERVICES, PROCEDURE — COMMISSIONER OF ADMINISTRATION TO COOPERATE — RULES, PROCEDURE. — 1. The department may purchase services for patients, residents or clients from private and public vendors in this state with funds appropriated for this purpose.

2. Services that may be purchased may include prevention, diagnosis, evaluation, treatment, habilitation, rehabilitation, transportation and other special services for persons affected by mental disorders, mental illness, mental retardation, developmental disabilities or alcohol or drug abuse.

3. The commissioner of administration, in consultation with the director, shall promulgate rules establishing procedures consistent with the usual state purchasing procedures **[**under**] pursuant to** chapter 34, RSMo, for the purchase of services **[**under**] pursuant to** this section. The commissioner may authorize the department to purchase any technical service which, in his judgment, can best be purchased direct **[**under**] pursuant to** chapter 34, RSMo. The commissioner shall cooperate with the department to purchase timely services appropriate to the needs of the patients, residents or clients of the department.

4. The commissioner of administration may promulgate rules authorizing the department to review, suspend, terminate, or otherwise take remedial measures with respect to contracts with vendors as defined in subsection one of this section that fail to comply with the requirements of section 210.906, RSMo.

5. The commissioner of administration may promulgate rules for a waiver of chapter 34, RSMo, bidding procedures for the purchase of services for patients, residents and clients with funds appropriated for that purpose if, in the commissioner's judgment, such services can best be purchased directly by the department.

6. No rule or portion of a rule promulgated **[**under**] pursuant to** the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of **[**section 536.024**] chapter 536**, RSMo.

SECTION 1. CHILD ABUSE, CUSTODY AND NEGLECT COMMISSION CREATED, MEMBERS, TERMS — REPORTS — EXPIRATION DATE. — 1. There is hereby created within the office of the governor a "Child Abuse, Custody and Neglect Commission" which shall evaluate the laws and rules relating to child abuse, neglect, child custody and visitation and termination of parental rights and shall make recommendations on further action or legislative remedies, if any, to be taken as necessary. The commission shall review and recommend standardized guidelines for judicial review of what constitutes the best interest of the child.

2. The child abuse, custody and neglect commission shall be composed of twelve members to be appointed by the governor, including a county prosecutor, a law enforcement officer, a juvenile officer, a certified guardian ad litem, a juvenile court judge, a member of the clergy, a psychologist, a pediatrician, an educator, the chairman of the children's services commission, a division of family services designee, and one citizen of the state of Missouri, chosen to reflect the racial composition of the state, to serve four-year terms and of the members first appointed, four shall serve for a term of two years, four shall serve for a term of three years, and four shall serve for a term of four years.

3. The commission shall make its first report to the governor and the general assembly by February 1, 2002, and any subsequent reports shall be made to the governor, the chief justice of the supreme court and the general assembly as necessary.

4. All members shall serve without compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of their official duties for the commission.

5. The office of the governor shall provide funding, administrative support, and staff for the effective operation of the commission.

6. This section shall expire on August 28, 2004.

Approved July 6, 2001

SB 58 [SB 58]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Establishes a Bird Appreciation Day.

AN ACT to amend chapter 9, RSMo, by adding thereto one new section relating to "Bird Appreciation Day".

SECTION
A. Enacting clause.
9.105. Bird appreciation day observed, when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 9, RSMo, is amended by adding thereto one new section, to be known as section 9.105, to read as follows:

9.105. BIRD APPRECIATION DAY OBSERVED, WHEN. — The twenty-first of March shall be designated as "Bird Appreciation Day" to be observed by elementary and secondary schools, cities, state agencies and civic organizations with activities designed to enhance the knowledge and appreciation of Missouri birds.

Approved June 27, 2001

SB 86 [HCS SB 86]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Proposed county building code shall be submitted only to voters in the area governed by the code.

AN ACT to repeal sections 64.170, 64.180 and 64.342, RSMo 2000, relating to building codes in certain counties, and to enact in lieu thereof five new sections relating to the same subject.

SECTION

A. Enacting clause.
64.170. County commissions control construction — issue building permits — appoint building commission (first and second class counties) — Jefferson County, separate provision — voter approval for building code necessary, which counties.
64.180. Building commission — appointment — term — code of regulations — enforcement (first and second class counties).
64.196. Nationally recognized building code adopted, when.
64.342. Park concession stands or marinas, county-operated, funds go to county park fund (Clay County).
1. Waiver of state's rights to reverter in certain property (Scott County).

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 64.170, 64.180 and 64.342, RSMo 2000, are repealed and five new sections enacted in lieu thereof, to be known as sections 64.170, 64.180, 64.196, 64.342 and 1, to read as follows:

64.170. COUNTY COMMISSIONS CONTROL CONSTRUCTION — ISSUE BUILDING PERMITS — APPOINT BUILDING COMMISSION (FIRST AND SECOND CLASS COUNTIES) — JEFFERSON COUNTY, SEPARATE PROVISION — VOTER APPROVAL FOR BUILDING CODE NECESSARY, WHICH COUNTIES. — 1. For the purpose of promoting the public safety, health and general welfare, to protect life and property and to prevent the construction of fire hazardous buildings, the county commission in all counties of the first and second classification, as provided by law, is for this purpose empowered**, subject to the provisions of subsections 3 and 4 of this section,** to adopt by order or ordinance regulations to control the construction, reconstruction, alteration or repair of any building or structure and any electrical wiring or electrical installation**, plumbing or drain laying** therein, and provide for the issuance of building permits and adopt regulations licensing persons, firms or corporations other than federal, state or local governments, public utilities and their contractors engaged in the business of electrical wiring or installations and provide for the inspection thereof and establish a schedule of permit, license and inspection fees and appoint a building commission to prepare the regulations, as herein provided.

2. For the purpose of promoting the public safety, health and general welfare, to protect life and property, the county commission in a county of the first classification having a population of more than one hundred sixty thousand but less than two hundred thousand, as provided by

law, is for this purpose empowered to adopt by order or ordinance regulations to control the construction, reconstruction, alteration or repair of any building or structure, and provide for the issuance of building permits and adopt regulations licensing contractors, firms or corporations other than federal, state or local governments, public utilities and their contractors engaged in the business of plumbing or drain laying and provide for the inspection thereof and establish a schedule of permit, license and inspection fee and appoint a building commission to prepare the regulations, as herein provided.

3. Any county which has not adopted a building code prior to August 28, 2001, pursuant to sections 64.170 to 64.200, shall not have the authority to adopt a building code pursuant to such sections unless the authority is approved by voters, subject to the provisions of subsection 4 of this section. The ballot of submission for authority pursuant to this subsection shall be in substantially the following form:

"Shall ..... (insert name of county) have authority to create, adopt and impose a county building code?

[ ] YES [ ] NO ".

4. The proposal of the authority to adopt a building code shall be voted on only by voters in the area affected by the proposed code, such that a code affecting a county shall not be voted upon by citizens of any incorporated territory.

64.180. BUILDING COMMISSION — APPOINTMENT — TERM — CODE OF REGULATIONS — ENFORCEMENT (FIRST AND SECOND CLASS COUNTIES). — 1. The county commission of any county which shall exercise the authority granted under the provisions of sections 64.170 to 64.200 shall appoint a building commission consisting of five members, residents and taxpayers of the county, one of whom shall be a member of the county commission, to be selected by the county commission. The members of the commission shall serve without compensation for a term of two years. The term of the county commission member shall not extend beyond the tenure of his office.

2. Said commission shall prepare a building and electrical code of regulations under the powers granted herein, which shall be submitted to the county commission for adoption. Such code of regulations shall be in accord with standards prescribed by recognized inspection and testing laboratories and agencies **consistent with section 64.196**.

3. Before the adoption of such code of regulations, the **county** commission shall hold at least three public hearings thereon, fifteen days' notice of the time and place of which shall be published in at least two newspapers having general circulation within the county and notice of such hearings shall also be posted at least fifteen days in advance thereof in four conspicuous places in the county. The regulations adopted shall be applicable to the unincorporated territory of the county, except as otherwise provided herein, and may from time to time be amended by the county commission after hearings are held and notice given, as prescribed herein. The county commission is authorized to employ and pay the personnel necessary to enforce the regulations adopted.

64.196. NATIONALLY RECOGNIZED BUILDING CODE ADOPTED, WHEN. — After August 28, 2001, any county seeking to adopt a building code in a manner set forth in section 64.180 shall, in creating or amending such code, adopt a current, calendar year 1999 or later edition, nationally recognized building code, as amended.

64.342. PARK CONCESSION STANDS OR MARINAS, COUNTY-OPERATED, FUNDS GO TO COUNTY PARK FUND (CLAY COUNTY). — 1. Section 64.341 to the contrary notwithstanding, the county commission of any county of the first classification without a charter form of government with a population of at least one hundred fifty thousand containing part of a city with a population over three hundred fifty thousand is hereby authorized to acquire, by purchase or gift, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate, in

whole or in part, concession stands or marinas within any area contiguous to the lake which is used as a public park, playground, camping site or recreation area. **No such lease or concession grant shall be for a longer term than twenty-five years.**

2. Such concession stands or marinas may offer refreshments for sale to the public using such areas and services therein relating to boating, swimming, picnicking, golfing, shooting, horseback riding, fishing, tennis and other recreational, cultural and educational uses upon such terms and under such regulations as the county may prescribe.

3. All moneys derived from the operation of concession stands or marinas shall be paid into the county treasury and be credited to a "Park Fund" to be established by each county authorized under subsection 1 of this section and be used and expended by the county commission for park purposes.

4. The provisions of this section authorizing and extending authority to counties concerning marinas shall not apply to any privately operated marina in operation prior to August 28, 2000**, except that if an operator is in default or if no bids are received during the open bid period, then the county may operate such marina for a period not to exceed a cumulative total of twenty-four months**.

SECTION 1. WAIVER OF STATE'S RIGHTS OF REVERTER IN CERTAIN PROPERTY (SCOTT COUNTY). — The state of Missouri hereby waives all rights to its possibility of reverter in the real property particularly described in the quitclaim deed in Book 279 at Pages 76-77 of the office of the recorder of deeds of Scott County.

Approved July 6, 2001

SB 87 [SB 87]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Requires assessment to be filed with petition for civil commitment of sexually violent predators.

AN ACT to repeal sections 632.483 and 632.486, RSMo 2000, relating to civil commitment of sexually violent predators, and to enact in lieu thereof two new sections relating to the same subject.

SECTION

A. Enacting clause.

632.483. Notice to attorney general, when — contents of notice — immunity from liability, when — multidisciplinary team established — prosecutors' review committee established.

632.486. Petition filed by attorney general, when — copy of multidisciplinary team's assessment to be filed with petition.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 632.483 and 632.486, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 632.483 and 632.486, to read as follows:

632.483. NOTICE TO ATTORNEY GENERAL, WHEN — CONTENTS OF NOTICE — IMMUNITY FROM LIABILITY, WHEN — MULTIDISCIPLINARY TEAM ESTABLISHED —

PROSECUTORS' REVIEW COMMITTEE ESTABLISHED. — 1. When it appears that a person may meet the criteria of a sexually violent predator, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection 4 of this section. Written notice shall be given:

(1) Within one hundred eighty days prior to the anticipated release from a correctional center of the department of corrections of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than one hundred eighty days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) At any time prior to the release of a person who has been found not guilty by reason of mental disease or defect of a sexually violent offense; or

(3) At any time prior to the release of a person who was committed as a criminal sexual psychopath pursuant to section 632.475 and statutes in effect before August 13, 1980.

2. The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection 4 of this section of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) Documentation of institutional adjustment and any treatment received or refused, including the Missouri sexual offender program.

3. The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection 4 of this section, members of the prosecutor's review committee appointed as provided in subsection 5 of this section and individuals contracting or appointed to perform services hereunder shall be immune from liability for any conduct performed in good faith and without gross negligence pursuant to the provisions of sections 632.480 to 632.513.

4. The director of the department of mental health and the director of the department of corrections shall establish a multidisciplinary team consisting of no more than seven members, at least one from the department of corrections and the department of **mental** health, and which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection 1 of this section. The team, within thirty days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

5. Effective January 1, 2000, the prosecutors coordinators training council established pursuant to section 56.760, RSMo, shall appoint a five-member prosecutor's review committee composed of a cross section of county prosecutors from urban and rural counties. No more than three shall be from urban counties, and one member shall be the prosecuting attorney of the county in which the person was convicted or committed pursuant to chapter 552, RSMo. The committee shall review the records of each person referred to the attorney general pursuant to subsection 1 of this section. The prosecutor's review committee shall make a determination of whether or not the person meets the definition of a sexually violent predator. The determination of the prosecutors' review committee or any member pursuant to this section or section 632.484 shall not be admissible evidence in any proceeding to prove whether or not the person is a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

632.486. PETITION FILED BY ATTORNEY GENERAL, WHEN — COPY OF MULTIDISCIPLINARY TEAM'S ASSESSMENT TO BE FILED WITH PETITION. — When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee appointed as provided in subsection 5 of section 632.483 has determined by a majority vote, that the person meets the definition of a sexually violent predator, the attorney general may file a petition, in the probate division of the circuit court in which the person was convicted, or committed pursuant to chapter 552, RSMo, within forty-five days of the date the attorney general received the written notice by the agency with jurisdiction as provided in

subsection 1 of section 632.483, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation. **A copy of the assessment of the multidisciplinary team must be filed with the petition.**

Approved June 8, 2001

SB 89 [HS HCS SS SCS SB 89 & 37]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Creates a new possession crime for anhydrous ammonia and increases penalties for current ammonia crimes.

AN ACT to repeal sections 160.261, 195.010, 195.235, 195.246 and 570.030, RSMo 2000, and to enact in lieu thereof thirteen new sections relating to drug offenses, with penalty provisions.

SECTION

A. Enacting clause.
160.261. Discipline, written policy established by local boards of education — contents — reporting requirements — need to know defined — weapons offense, mandatory suspension or expulsion — no civil liability for authorized personnel — spanking not child abuse, when — investigation procedure — officials falsifying reports, penalty.
195.010. Definitions.
195.235. Unlawful delivery or manufacture of drug paraphernalia, penalty — possession is prima facie evidence of intent to violate section.
195.246. Possession of ephedrine, penalty — possession is prima facie evidence of intent to violate section.
195.417. Limit on over-the-counter sale of methamphetamine, exceptions — violations, penalty.
195.418. Limitations on the retail sale of methamphetamine precursor drugs — violations, penalty.
195.515. Copy of suspicious transaction report for certain drugs to be submitted to chief law enforcement officer, when — suspicious transaction defined — violations, penalty.
441.236. Disclosures required for transfer of property where methamphetamine production occurred.
442.606. Methamphetamine production, seller of property to disclose to buyer such production and certain criminal convictions.
478.009. Drug courts coordinating commission established, members, meetings — fund created.
537.297. Transfer of anhydrous ammonia, tamperer assumes risk — owners immune from liability and suit, when.
570.030. Stealing — penalties.
578.154. Possession of anhydrous ammonia, crime of — penalty.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 160.261, 195.010, 195.235, 195.246 and 570.030, RSMo 2000, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 160.261, 195.010, 195.235, 195.246, 195.417, 195.418, 195.515, 441.236, 442.606, 478.009, 537.297, 570.030 and 578.154, to read as follows:

160.261. DISCIPLINE, WRITTEN POLICY ESTABLISHED BY LOCAL BOARDS OF EDUCATION — CONTENTS — REPORTING REQUIREMENTS — NEED TO KNOW DEFINED — WEAPONS OFFENSE, MANDATORY SUSPENSION OR EXPULSION — NO CIVIL LIABILITY FOR AUTHORIZED PERSONNEL — SPANKING NOT CHILD ABUSE, WHEN — INVESTIGATION PROCEDURE — OFFICIALS FALSIFYING REPORTS, PENALTY. — 1. The local board of education of each school district shall clearly establish a written policy of discipline, including the district's determination on the use of corporal punishment and the procedures in which punishment will be applied. A written copy of the district's discipline policy and corporal

punishment procedures, if applicable, shall be provided to the pupil and parent or legal guardian of every pupil enrolled in the district at the beginning of each school year and also made available in the office of the superintendent of such district, during normal business hours, for public inspection. All employees of the district shall annually receive instruction related to the specific contents of the policy of discipline and any interpretations necessary to implement the provisions of the policy in the course of their duties, including but not limited to approved methods of dealing with acts of school violence, disciplining students with disabilities and instruction in the necessity and requirements for confidentiality.

2. The policy shall require school administrators to report acts of school violence to teachers and other school district employees with a need to know. For the purposes of this **[**act**]** **chapter or chapter 167, RSMo**, "need to know" is defined as school personnel who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties. As used in this section, the phrase "act of school violence" or "violent behavior" means the exertion of physical force by a student with the intent to do serious physical injury as defined in subdivision (6) of section 565.002, RSMo, to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. The policy shall at a minimum require school administrators to report, as soon as reasonably practical, to the appropriate law enforcement agency any of the following felonies, or any act which if committed by an adult would be one of the following felonies:

(1) First degree murder under section 565.020, RSMo;
(2) Second degree murder under section 565.021, RSMo;
(3) Kidnapping under section 565.110, RSMo;
(4) First degree assault under section 565.050, RSMo;
(5) Forcible rape under section 566.030, RSMo;
(6) Forcible sodomy under section 566.060, RSMo;
(7) Burglary in the first degree under section 569.160, RSMo;
(8) Burglary in the second degree under section 569.170, RSMo;
(9) Robbery in the first degree under section 569.020, RSMo;
(10) Distribution of drugs under section 195.211, RSMo;
(11) Distribution of drugs to a minor under section 195.212, RSMo;
(12) Arson in the first degree under section 569.040, RSMo;
(13) Voluntary manslaughter under section 565.023, RSMo;
(14) Involuntary manslaughter under section 565.024, RSMo;
(15) Second degree assault under section 565.060, RSMo;
(16) Sexual assault under section 566.040, RSMo;
(17) Felonious restraint under section 565.120, RSMo;
(18) Property damage in the first degree under section 569.100, RSMo;
(19) The possession of a weapon under chapter 571, RSMo;
(20) Child molestation in the first degree pursuant to section 566.067, RSMo;
(21) Deviate sexual assault pursuant to section 566.070, RSMo;
(22) Sexual misconduct involving a child pursuant to section 566.083, RSMo; or
(23) Sexual abuse pursuant to section 566.100, RSMo;

committed on school property, including but not limited to actions on any school bus in service on behalf of the district or while involved in school activities. The policy shall require that any portion of a student's individualized education program that is related to demonstrated or potentially violent behavior shall be provided to any teacher and other school district employees who are directly responsible for the student's education or who otherwise interact with the student on an educational basis while acting within the scope of their assigned duties. The policy shall also contain the consequences of failure to obey standards of conduct set by the local board of education, and the importance of the standards to the maintenance of an atmosphere where orderly learning is possible and encouraged.

3. The policy shall provide for a suspension for a period of not less than one year, or expulsion, for a student who is determined to have brought a weapon to school, including but not limited to the school playground or the school parking lot, brought a weapon on a school bus or brought a weapon to a school activity whether on or off of the school property in violation of district policy, except that:

(1) The superintendent, or in a school district with no high school, the principal of the school which such child attends may modify such suspension on a case-by-case basis; and

(2) This section shall not prevent the school district from providing educational services in an alternative setting to a student suspended under the provisions of this section.

4. For the purpose of this section, the term "weapon" shall mean a firearm as defined under 18 U.S.C. 921 and the following items, as defined in section 571.010, RSMo: a blackjack, a concealable firearm, an explosive weapon, a firearm, a firearm silencer, a gas gun, a knife, knuckles, a machine gun, a projectile weapon, a rifle, a shotgun, a spring gun or a switchblade knife; except that this section shall not be construed to prohibit a school board from adopting a policy to allow a Civil War reenactor to carry a Civil War era weapon on school property for educational purposes so long as the firearm is unloaded. The local board of education shall define weapon in the discipline policy. Such definition shall include the weapons defined in this subsection but may also include other weapons.

5. All school district personnel responsible for the care and supervision of students are authorized to hold every pupil strictly accountable for any disorderly conduct in school or on any property of the school, on any school bus going to or returning from school, during school-sponsored activities, or during intermission or recess periods.

6. Teachers and other authorized district personnel in public schools responsible for the care, supervision, and discipline of schoolchildren, including volunteers selected with reasonable care by the school district, shall not be civilly liable when acting in conformity with the established policy of discipline developed by each board under this section**, or when reporting to his or her supervisor or other person as mandated by state law, acts of school violence or threatened acts of school violence, within the course and scope of the duties of the teacher, authorized district personnel or volunteer, when such individual is acting in conformity with the established policies developed by the board. Nothing in this section shall be construed to create a new cause of action against such school district, or to relieve the school district from liability for the negligent acts of such persons**.

7. Each school board shall define in its discipline policy acts of violence and any other acts that constitute a serious violation of that policy. Acts of violence as defined by school boards shall include but not be limited to exertion of physical force by a student with the intent to do serious bodily harm to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities. School districts shall for each student enrolled in the school district compile and maintain records of any serious violation of the district's discipline policy. Such records shall be made available to teachers and other school district employees with a need to know while acting within the scope of their assigned duties, and shall be provided as required in section 167.020, RSMo, to any school district in which the student subsequently attempts to enroll.

8. Spanking, when administered by certificated personnel of a school district in a reasonable manner in accordance with the local board of education's written policy of discipline, is not abuse within the meaning of chapter 210, RSMo. The provisions of sections 210.110 to 210.165, RSMo, notwithstanding, the division of family services shall not have jurisdiction over or investigate any report of alleged child abuse arising out of or related to any spanking administered in a reasonable manner by any certificated school personnel pursuant to a written policy of discipline established by the board of education of the school district. Upon receipt of any reports of child abuse by the division of family services pursuant to sections 210.110 to 210.165, RSMo, which allegedly involves personnel of a school district, the division of family services shall notify the superintendent of schools of the district or, if the person named in the

alleged incident is the superintendent of schools, the president of the school board of the school district where the alleged incident occurred. If, after an initial investigation, the superintendent of schools or the president of the school board finds that the report involves an alleged incident of child abuse other than the administration of a spanking by certificated school personnel pursuant to a written policy of discipline or a report made for the sole purpose of harassing a public school employee, the superintendent of schools or the president of the school board shall immediately refer the matter back to the division of family services and take no further action. In all matters referred back to the division of family services, the division of family services shall treat the report in the same manner as other reports of alleged child abuse received by the division. If the report pertains to an alleged incident which arose out of or is related to a spanking administered by certificated personnel of a school district pursuant to a written policy of discipline or a report made for the sole purpose of harassing a public school employee, a notification of the reported child abuse shall be sent by the superintendent of schools or the president of the school board to the juvenile officer of the county in which the alleged incident occurred. The report shall be jointly investigated by the juvenile officer or a law enforcement officer designated by the juvenile officer and the superintendent of schools or, if the subject of the report is the superintendent of schools, by the juvenile officer or a law enforcement officer designated by the juvenile officer and the president of the school board or such president's designee. The investigation shall begin no later than forty-eight hours after notification from the division of family services is received, and shall consist of, but need not be limited to, interviewing and recording statements of the child and the child's parents or guardian within two working days after the start of the investigation, of the school district personnel allegedly involved in the report, and of any witnesses to the alleged incident. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school district personnel shall issue separate reports of their findings and recommendations after the conclusion of the investigation to the school board of the school district within seven days after receiving notice from the division of family services. The reports shall contain a statement of conclusion as to whether the report of alleged child abuse is substantiated or is unsubstantiated. The school board shall consider the separate reports and shall issue its findings and conclusions and the action to be taken, if any, within seven days after receiving the last of the two reports. The findings and conclusions shall be made in substantially the following form:

(1) The report of the alleged child abuse is unsubstantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school board personnel agree that the evidence shows that no abuse occurred;

(2) The report of the alleged child abuse is substantiated. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school district personnel agree that the evidence is sufficient to support a finding that the alleged incident of child abuse did occur;

(3) The issue involved in the alleged incident of child abuse is unresolved. The juvenile officer or a law enforcement officer designated by the juvenile officer and the investigating school personnel are unable to agree on their findings and conclusions on the alleged incident.

9. The findings and conclusions of the school board shall be sent to the division of family services. If the findings and conclusions of the school board are that the report of the alleged child abuse is unsubstantiated, the investigation shall be terminated, the case closed, and no record shall be entered in the division of family services' central registry. If the findings and conclusions of the school board are that the report of the alleged child abuse is substantiated, the division of family services shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school district and shall include the information in the division's central registry. If the findings and conclusions of the school board are that the issue involved in the alleged incident of child abuse is unresolved, the division of family services shall report the incident to the prosecuting attorney of the appropriate county along with the findings and conclusions of the school board, however, the incident and the

names of the parties allegedly involved shall not be entered into the central registry of the division of family services unless and until the alleged child abuse is substantiated by a court of competent jurisdiction.

10. Any superintendent of schools, president of a school board or such person's designee or juvenile officer who knowingly falsifies any report of any matter pursuant to this section or who knowingly withholds any information relative to any investigation or report pursuant to this section is guilty of a class A misdemeanor.

195.010. DEFINITIONS. — The following words and phrases as used in sections 195.005 to 195.425, unless the context otherwise requires, mean:

(1) "Addict", a person who habitually uses one or more controlled substances to such an extent as to create a tolerance for such drugs, and who does not have a medical need for such drugs, or who is so far addicted to the use of such drugs as to have lost the power of self-control with reference to his addiction;

(2) "Administer", to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(a) A practitioner (or, in his presence, by his authorized agent); or

(b) The patient or research subject at the direction and in the presence of the practitioner;

(3) "Agent", an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman while acting in the usual and lawful course of the carrier's or warehouseman's business;

(4) "Attorney for the state", any prosecuting attorney, circuit attorney, or attorney general authorized to investigate, commence and prosecute an action under sections 195.005 to 195.425;

(5) "Controlled substance", a drug, substance, or immediate precursor in Schedules I through V listed in sections 195.005 to 195.425;

(6) "Controlled substance analogue", a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(a) Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(b) With respect to a particular individual, which that individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II. The term does not include a controlled substance; any substance for which there is an approved new drug application; any substance for which an exemption is in effect for investigational use, for a particular person, under Section 505 of the federal Food, Drug and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to the substance is pursuant to the exemption; or any substance to the extent not intended for human consumption before such an exemption takes effect with respect to the substance;

(7) "Counterfeit substance", a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;

(8) "Deliver" or "delivery", the actual, constructive, or attempted transfer from one person to another of drug paraphernalia or of a controlled substance, or an imitation controlled substance, whether or not there is an agency relationship, and includes a sale;

(9) "Dentist", a person authorized by law to practice dentistry in this state;

(10) "Depressant or stimulant substance":

(a) A drug containing any quantity of barbituric acid or any of the salts of barbituric acid or any derivative of barbituric acid which has been designated by the United States Secretary of Health and Human Services as habit forming under 21 U.S.C. 352(d);

(b) A drug containing any quantity of:

a. Amphetamine or any of its isomers;

b. Any salt of amphetamine or any salt of an isomer of amphetamine; or

c. Any substance the United States Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system;

(c) Lysergic acid diethylamide; or

(d) Any drug containing any quantity of a substance that the United States Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect;

(11) "Dispense", to deliver a narcotic or controlled dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery. "Dispenser" means a practitioner who dispenses;

(12) "Distribute", to deliver other than by administering or dispensing a controlled substance;

(13) "Distributor", a person who distributes;

(14) "Drug":

(a) Substances recognized as drugs in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;

(c) Substances, other than food, intended to affect the structure or any function of the body of humans or animals; and

(d) Substances intended for use as a component of any article specified in this subdivision. It does not include devices or their components, parts or accessories;

(15) "Drug-dependent person", a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from the use of such substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence;

(16) "Drug enforcement agency", the Drug Enforcement Administration in the United States Department of Justice, or its successor agency;

(17) "Drug paraphernalia", all equipment, products**, substances** and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or an imitation controlled substance in violation of sections 195.005 to 195.425. It includes, but is not limited to:

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances or imitation controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance or an imitation controlled substance;

(d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances or imitation controlled substances;

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances or imitation controlled substances;

(f) Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances or imitation controlled substances;

(g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(h) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances or imitation controlled substances;

(i) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances or imitation controlled substances;

(j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or imitation controlled substances;

(k) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances or imitation controlled substances into the human body;

(l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

i. Electric pipes;

j. Air-driven pipes;

k. Chillums;

l. Bongs;

m. Ice pipes or chillers;

(m) Substances used, intended for use, or designed for use in the manufacture of a controlled substance;

In determining whether an object**, product, substance or material** is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use;

(b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance or imitation controlled substance;

(c) The proximity of the object, in time and space, to a direct violation of sections 195.005 to 195.425;

(d) The proximity of the object to controlled substances or imitation controlled substances;

(e) The existence of any residue of controlled substances or imitation controlled substances on the object;

(f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he knows, or should reasonably know, intend to use the object to facilitate a violation of sections 195.005 to 195.425; the innocence of an owner, or of

anyone in control of the object, as to direct violation of sections 195.005 to 195.425 shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(g) Instructions, oral or written, provided with the object concerning its use;

(h) Descriptive materials accompanying the object which explain or depict its use;

(i) National or local advertising concerning its use;

(j) The manner in which the object is displayed for sale;

(k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(l) Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(m) The existence and scope of legitimate uses for the object in the community;

(n) Expert testimony concerning its use;

(o) The quantity, form or packaging of the product, substance or material in relation to the quantity, form or packaging associated with any legitimate use for the product, substance or material;

(18) "Federal narcotic laws", the laws of the United States relating to controlled substances;

(19) "Hospital", a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care, for not less than twenty-four hours in any week, of three or more nonrelated individuals suffering from illness, disease, injury, deformity or other abnormal physical conditions; or a place devoted primarily to provide, for not less than twenty-four consecutive hours in any week, medical or nursing care for three or more nonrelated individuals. The term "hospital" does not include convalescent, nursing, shelter or boarding homes as defined in chapter 198, RSMo;

(20) "Immediate precursor", a substance which:

(a) The state department of health has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

(b) Is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(c) The control of which is necessary to prevent, curtail or limit the manufacture of the controlled substance;

(21) "Imitation controlled substance", a substance that is not a controlled substance, which by dosage unit appearance (including color, shape, size and markings), or by representations made, would lead a reasonable person to believe that the substance is a controlled substance. In determining whether the substance is an "imitation controlled substance" the court or authority concerned should consider, in addition to all other logically relevant factors, the following:

(a) Whether the substance was approved by the federal Food and Drug Administration for over-the-counter (nonprescription or nonlegend) sales and was sold in the federal Food and Drug Administration approved package, with the federal Food and Drug Administration approved labeling information;

(b) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances;

(d) Prior convictions, if any, of an owner, or anyone in control of the object, under state or federal law related to controlled substances or fraud;

(e) The proximity of the substances to controlled substances;

(f) Whether the consideration tendered in exchange for the noncontrolled substance substantially exceeds the reasonable value of the substance considering the actual chemical composition of the substance and, where applicable, the price at which over-the-counter substances of like chemical composition sell. An imitation controlled substance does not include

a placebo or registered investigational drug either of which was manufactured, distributed, possessed or delivered in the ordinary course of professional practice or research;

(22) "Laboratory", a laboratory approved by the department of health as proper to be entrusted with the custody of controlled substances but does not include a pharmacist who compounds controlled substances to be sold or dispensed on prescriptions;

(23) "Manufacture", the production, preparation, propagation, compounding or processing of drug paraphernalia or of a controlled substance, or an imitation controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include the preparation or compounding of a controlled substance or an imitation controlled substance or the preparation, compounding, packaging or labeling of a narcotic or dangerous drug:

(a) By a practitioner as an incident to his administering or dispensing of a controlled substance or an imitation controlled substance in the course of his professional practice, or

(b) By a practitioner or his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale;

(24) "Marijuana", all parts of the plant genus Cannabis in any species or form thereof, including, but not limited to Cannabis Sativa L., Cannabis Indica, Cannabis Americana, Cannabis Ruderalis, and Cannabis Gigantea, whether growing or not, the seeds thereof, the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination;

(25) **"Methamphetamine precursor drug", any drug containing ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers;**

(26) "Narcotic drug", any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical analysis:

(a) Opium, opiate, and any derivative, of opium or opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium;

(b) Coca leaves, but not including extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(c) Cocaine or any salt, isomer, or salt of isomer thereof;

(d) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof;

(e) Any compound, mixture, or preparation containing any quantity of any substance referred to in paragraphs (a) to (d) of this subdivision;

[(26)**]** **(27)** "Official written order", an order written on a form provided for that purpose by the United States Commissioner of Narcotics, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the department of health;

[(27)**]** **(28)** "Opiate", any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes its racemic and levorotatory forms. It does not include, unless specifically controlled under section 195.017, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan);

[(28)**]** **(29)** "Opium poppy", the plant of the species Papaver somniferum L., except its seeds;

(30) "Over-the-counter sale", a retail sale licensed pursuant to chapter 144, RSMo, of a drug other than a controlled substance;

[(29)**]** **(31)** "Person", an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity;

[(30)**]** **(32)** "Pharmacist", a licensed pharmacist as defined by the laws of this state, and where the context so requires, the owner of a store or other place of business where controlled substances are compounded or dispensed by a licensed pharmacist; but nothing in sections 195.005 to 195.425 shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state;

[(31)**]** **(33)** "Poppy straw", all parts, except the seeds, of the opium poppy, after mowing;

[(32)**]** **(34)** "Possessed" or "possessing a controlled substance", a person, with the knowledge of the presence and nature of a substance, has actual or constructive possession of the substance. A person has actual possession if he has the substance on his person or within easy reach and convenient control. A person who, although not in actual possession, has the power and the intention at a given time to exercise dominion or control over the substance either directly or through another person or persons is in constructive possession of it. Possession may also be sole or joint. If one person alone has possession of a substance possession is sole. If two or more persons share possession of a substance, possession is joint;

[(33)**]** **(35)** "Practitioner", a physician, dentist, optometrist, podiatrist, veterinarian, scientific investigator, pharmacy, hospital or other person licensed, registered or otherwise permitted by this state to distribute, dispense, conduct research with respect to or administer or to use in teaching or chemical analysis, a controlled substance in the course of professional practice or research in this state, or a pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research;

[(34)**]** **(36)** "Production", includes the manufacture, planting, cultivation, growing, or harvesting of drug paraphernalia or of a controlled substance or an imitation controlled substance;

[(35)**]** **(37)** "Registry number", the number assigned to each person registered under the federal controlled substances laws;

[(36)**]** **(38)** "Sale", includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee;

[(37)**]** **(39)** "State" when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America;

[(38)**]** **(40)** "Ultimate user", a person who lawfully possesses a controlled substance or an imitation controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household;

[(39)**]** **(41)** "Wholesaler", a person who supplies drug paraphernalia or controlled substances or imitation controlled substances that he himself has not produced or prepared, on official written orders, but not on prescriptions.

195.235. UNLAWFUL DELIVERY OR MANUFACTURE OF DRUG PARAPHERNALIA, PENALTY — POSSESSION IS PRIMA FACIE EVIDENCE OF INTENT TO VIOLATE SECTION. — 1. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture, with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject,

ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance in violation of sections 195.005 to 195.425.

2. **Possession of more than twenty-four grams of any methamphetamine precursor drug or combination of methamphetamine precursor drugs shall be prima facie evidence of intent to violate this section. This subsection shall not apply to any practitioner or to any product possessed in the course of a legitimate business.**

3. A person who violates this section is guilty of a class D felony.

195.246. POSSESSION OF EPHEDRINE, PENALTY — POSSESSION IS PRIMA FACIE EVIDENCE OF INTENT TO VIOLATE SECTION. — 1. It is unlawful for any person to possess **[**ephedrine, its salts, optical isomers and salts of optical isomers or pseudoephedrine, its salts, optical isomers and salts of optical isomers**] any methamphetamine precursor drug** with the intent to manufacture **amphetamine,** methamphetamine or any of **[**its**] their** analogs.

2. **Possession of more than twenty-four grams of any methamphetamine precursor drug or combination of methamphetamine precursor drugs shall be prima facie evidence of intent to violate this section. This subsection shall not apply to any practitioner or to any product possessed in the course of a legitimate business.**

3. A person who violates this section is guilty of a class D felony.

195.417. LIMIT ON OVER-THE-COUNTER SALE OF METHAMPHETAMINE, EXCEPTIONS — VIOLATIONS, PENALTY. — 1. No person shall deliver in any single over- the-counter sale more than three packages of any methamphetamine precursor drug or any combination of methamphetamine precursor drugs.

2. This section shall not apply to any product labeled pursuant to federal regulation for use only in children under twelve years of age, or to any products that the state department of health, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors.

3. Any person who knowingly or recklessly violates this section is guilty of a class A misdemeanor.

195.418. LIMITATIONS ON THE RETAIL SALE OF METHAMPHETAMINE PRECURSOR DRUGS — VIOLATIONS, PENALTY. — 1. The retail sale of methamphetamine precursor drugs shall be limited to:

(1) Sales in packages containing not more than a total of three grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine base, pseudoephedrine base and phenylpropanolamine base; and

(2) For nonliquid products, sales in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, sales in unit dose packets or pouches.

2. Any person holding a retail sales license pursuant to chapter 144, RSMo, who knowingly violates subsection 1 of this section is guilty of a class A misdemeanor.

3. Any person who is considered the general owner or operator of the outlet where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who violates subsection 1 of this section shall not be penalized pursuant to this section if such person documents that an employee training program was in place to provide the employee with information on the state and federal regulations regarding ephedrine, pseudoephedrine, or phenylpropanolamine.

195.515. COPY OF SUSPICIOUS TRANSACTION REPORT FOR CERTAIN DRUGS TO BE SUBMITTED TO CHIEF LAW ENFORCEMENT OFFICER, WHEN — SUSPICIOUS TRANSACTION DEFINED — VIOLATIONS, PENALTY. — 1. Any manufacturer or wholesaler who sells,

transfers, or otherwise furnishes ephedrine, pseudoephedrine or phenylpropanolamine, or any of their salts, optical isomers and salts of optical isomers, alone or in a mixture, and is required by federal law to report any suspicious transaction to the United States attorney general, shall submit a copy of the report to the chief law enforcement official with jurisdiction before completion of the sale or as soon as practicable thereafter.

2. As used in this section, "suspicious transaction" means any sale or transfer required to be reported pursuant to 21 U.S.C. 830(b)(1).

3. Any violation of this section shall be a class D felony.

441.236. DISCLOSURES REQUIRED FOR TRANSFER OF PROPERTY WHERE METHAMPHETAMINE PRODUCTION OCCURRED. — 1. In the event that any premises to be leased by a landlord is or was used as a site for methamphetamine production, the landlord shall disclose in writing to the tenant the fact that methamphetamine was produced on the premises, provided that the landlord had knowledge of such prior methamphetamine production. The landlord shall disclose any prior knowledge of methamphetamine production, regardless of whether the persons involved in the production were convicted for such production.

2. A landlord shall disclose in writing the fact that any premises to be leased by the landlord either was the place of residence of a person convicted of any of the following crimes, or was the storage site or laboratory for any of the substances for which a person was convicted of any of the following crimes, provided that the landlord knew or should have known of such convictions:

(1) Creation of a controlled substance in violation of section 195.420, RSMo;

(2) Possession of ephedrine with intent to manufacture methamphetamine in violation of section 195.246, RSMo;

(3) Unlawful use of drug paraphernalia with the intent to manufacture methamphetamine in violation of subsection 2 of section 195.233, RSMo;

(4) Endangering the welfare of a child by any of the means described in subdivision (4) or (5) of subsection 1 of section 568.045, RSMo; or

(5) Any other crime related to methamphetamine, its salts, optical isomers and salts of its optical isomers either in chapter 195, RSMo, or in any other provision of law.

442.606. METHAMPHETAMINE PRODUCTION, SELLER OF PROPERTY TO DISCLOSE TO BUYER SUCH PRODUCTION AND CERTAIN CRIMINAL CONVICTIONS. — 1. In the event that any parcel of real property to be sold, exchanged or transferred is or was used as a site for methamphetamine production, the seller or transferor shall disclose in writing to the buyer or transferee the fact that methamphetamine was produced on the premises, provided that the seller or transferor had knowledge of such prior methamphetamine production. The seller or transferor shall disclose any prior knowledge of methamphetamine production, regardless of whether the persons involved in the production were convicted for such production.

2. A seller or transferor of any parcel of real property shall disclose in writing the fact that any premises to be sold or transferred either was the place of residence of a person convicted of any of the following crimes, or was the storage site or laboratory for any of the substances for which a person was convicted of any of the following crimes, provided that the seller or transferor knew or should have known of such convictions:

(1) Creation of a controlled substance in violation of section 195.420, RSMo;

(2) Possession of ephedrine with intent to manufacture methamphetamine in violation of section 195.246, RSMo;

(3) Unlawful use of drug paraphernalia with the intent to manufacture methamphetamine in violation of subsection 2 of section 195.233, RSMo;

(4) Endangering the welfare of a child by any of the means described in subdivision (4) or (5) of subsection 1 of section 568.045, RSMo; or

(5) Any other crime related to methamphetamine, its salts, optical isomers and salts of its optical isomers either in chapter 195, RSMo, or in any other provision of law.

478.009. DRUG COURTS COORDINATING COMMISSION ESTABLISHED, MEMBERS, MEETINGS — FUND CREATED. — 1. In order to coordinate the allocation of resources available to drug courts throughout the state, there is hereby established a "Drug Courts Coordinating Commission" in the judicial department. The drug courts coordinating commission shall consist of one member selected by the director of the department of corrections; one member selected by the director of the department of social services; one member selected by the director of the department of mental health; one member selected by the director of the department of public safety; one member selected by the state courts administrator; and three members selected by the supreme court. The supreme court shall designate the chair of the commission. The commission shall periodically meet at the call of the chair; evaluate resources available for assessment and treatment of persons assigned to drug courts or for operation of drug courts; secure grants, funds and other property and services necessary or desirable to facilitate drug court operation; and allocate such resources among the various drug courts operating within the state.

2. There is hereby established in the state treasury a "Drug Court Resources Fund", which shall be administered by the drug courts coordinating commission. Funds available for allocation or distribution by the drug courts coordinating commission may be deposited into the drug court resources fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the drug court resources fund shall not be transferred or placed to the credit of the general revenue fund of the state at the end of each biennium, but shall remain deposited to the credit of the drug court resources fund.

537.297. TRANSFER OF ANHYDROUS AMMONIA, TAMPERER ASSUMES RISK — OWNERS IMMUNE FROM LIABILITY AND SUIT, WHEN. — 1. The following words as used in this section shall have the following meanings:

(1) "Owner", all of the following persons:

(a) Any person who lawfully owns anhydrous ammonia;

(b) Any person who lawfully owns a container, equipment or storage facility containing anhydrous ammonia;

(c) Any person responsible for the installation or operation of such containers, equipment or storage facilities;

(d) Any person lawfully selling anhydrous ammonia;

(e) Any person lawfully purchasing anhydrous ammonia for agricultural purposes;

(f) Any person who operates or uses anhydrous ammonia containers, equipment or storage facilities when lawfully applying anhydrous ammonia for agricultural purposes;

(2) "Tamperer", a person who commits or assists in the commission of tampering;

(3) "Tampering", transferring or attempting to transfer anhydrous ammonia from its present container, equipment or storage facility to another container, equipment or storage facility, without prior authorization from the owners.

2. A tamperer assumes the risk of any personal injury, death and other economic and noneconomic loss arising from his or her participation in the act of tampering. A tamperer or any person related to a tamperer shall not commence a direct or derivative action against any owner as it relates to the act of tampering. Owners are immune from suit by a tamperer or any person related to a tamperer and shall not be held liable for any negligent act or omission which may cause personal injury, death or other economic or noneconomic loss to a tamperer as it relates to the act of tampering.

3. The immunity from liability and suit authorized by this section is expressly waived for owners whose acts or omissions constitute willful or wanton negligence.

570.030. STEALING — PENALTIES. — 1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

2. Evidence of the following is admissible in any criminal prosecution under this section on the issue of the requisite knowledge or belief of the alleged stealer:

(1) That he or she failed or refused to pay for property or services of a hotel, restaurant, inn or boardinghouse;

(2) That he or she gave in payment for property or services of a hotel, restaurant, inn or boardinghouse a check or negotiable paper on which payment was refused;

(3) That he or she left the hotel, restaurant, inn or boardinghouse with the intent to not pay for property or services;

(4) That he or she surreptitiously removed or attempted to remove his or her baggage from a hotel, inn or boardinghouse.

3. Stealing is a class C felony if:

(1) The value of the property or services appropriated is seven hundred fifty dollars or more; or

(2) The actor physically takes the property appropriated from the person of the victim; or

(3) The property appropriated consists of:

(a) Any motor vehicle, watercraft or aircraft; or

(b) Any will or unrecorded deed affecting real property; or

(c) Any credit card or letter of credit; or

(d) Any firearms; or

(e) A United States national flag designed, intended and used for display on buildings or stationary flagstaffs in the open; or

(f) Any original copy of an act, bill or resolution, introduced or acted upon by the legislature of the state of Missouri; or

(g) Any pleading, notice, judgment or any other record or entry of any court of this state, any other state or of the United States; or

(h) Any book of registration or list of voters required by chapter 115, RSMo; or

(i) Any animal of the species of horse, mule, ass, cattle, swine, sheep, or goat; or

(j) Live fish raised for commercial sale with a value of seventy-five dollars; or

(k) Any controlled substance as defined by section 195.010, RSMo.

4. If an actor appropriates any material with a value less than one hundred fifty dollars in violation of this section with the intent to use such material to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues, then such violation is a class D felony. The theft of any amount of anhydrous ammonia **or liquid nitrogen, or any attempt to steal any amount of anhydrous ammonia or liquid nitrogen,** is a class **[**D**] C** felony. **The theft of any amount of anhydrous ammonia by appropriation of a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank or field applicator is a class A felony.**

5. The theft of any item of property or services under subsection 3 of this section which exceeds seven hundred fifty dollars may be considered a separate felony and may be charged in separate counts.

6. Any person with a prior conviction of paragraph (i) of subdivision (3) of subsection 3 of this section and who violates the provisions of paragraph (i) of subdivision (3) of subsection 3 of this section when the value of the animal or animals stolen exceeds three thousand dollars is guilty of a class B felony.

7. Any violation of this section for which no other penalty is specified in this section is a class A misdemeanor.

578.154. POSSESSION OF ANHYDROUS AMMONIA, CRIME OF — PENALTY. — 1. A person commits the crime of possession of anhydrous ammonia in a nonapproved container if he or she possesses any quantity of anhydrous ammonia in any container other than a tank truck, tank trailer, rail tank car, bulk storage tank, field (nurse) tank or field applicator or any container approved for anhydrous ammonia by the department of agriculture or the United States Department of Transportation.

2. A violation of this section is a class D felony.

Approved July 2, 2001

SB 110 [SB 110]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Corrects intersectional references in law regulating the manufacture, renovation, and sale of mattresses.

AN ACT to repeal sections 421.005, 421.007, 421.011, 421.022, 421.028, 421.031 and 421.034, RSMo 2000, relating to mattresses, and to enact in lieu thereof seven new sections relating to the same subject, with a penalty provision.

SECTION

A. Enacting clause.
421.005. Definitions.
421.007. Bedding labels, content — removal of label prohibited — false or misleading labeling prohibited.
421.011. Form and size of bedding labels, approved by director — labeling requirements.
421.022. Bedding material grades, specifications and tolerances established by department of health — rulemaking authority.
421.028. Registration of bedding manufacturers, renovators and sanitizers — permits issued, procedure, fees.
421.031. Random testing and inspection permitted, when — penalties for violations — temporary restraining order issued, when — penalty for mislabeling.
421.034. Rulemaking authority.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 421.005, 421.007, 421.011, 421.022, 421.028, 421.031 and 421.034, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 421.005, 421.007, 421.011, 421.022, 421.028, 421.031 and 421.034, to read as follows:

421.005. DEFINITIONS. — For purposes of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038**, the following terms mean:

(1) "Bedding", any mattress, box springs, foundation or studio couch made, in whole or part of, new or secondhand fabric, filling materials, or other materials, which can be used for sleeping or reclining purposes. The term "bedding" does not include any component from which bedding is made;

(2) "Department", the department of health;

(3) "Director", director of the department of health;

(4) "Manufacture", the making of bedding out of new material;

(5) "New material", any fabric, filling material, other material or article of bedding that has not been previously used for any purpose, including by-products of any textile or manufacturing process that are free from dirt, insects and other contamination;

(6) "Person", an individual, sole proprietorship, partnership, limited liability company, corporation, joint venture, association, trust and any other entity and the agents, servants and employees of any of them;

(7) "Renovator", a person that repairs, makes over, recovers, restores, sanitizes, germicidally treats, cleans or renews bedding;

(8) "Sanitizer", a person that sanitizes, germicidally treats or cleans, but does not otherwise alter, any fabric, filling material, other materials, or article of bedding for use in manufacturing or renovating bedding;

(9) "Secondhand material", any fabric, filling material, other material, or article of bedding that has been previously used for any purpose or is derived from postconsumer or industrial waste and that may be used in place of new material in manufacturing or renovating bedding;

(10) "Seller", includes a person that offers or exposes for sale, barters, trades, delivers, consigns, leases, possesses with intent to sell, or disposes of bedding in any commercial manner at the wholesale, retail or other level of trade.

421.007. BEDDING LABELS, CONTENT — REMOVAL OF LABEL PROHIBITED — FALSE OR MISLEADING LABELING PROHIBITED. — 1. All bedding manufactured, renovated, sanitized or sold within the state shall bear a clear and conspicuous label that explicitly states whether the bedding is made from all new materials, or is made in whole or in part from secondhand materials. The label on bedding made from all new materials shall be white in color and shall state "ALL NEW MATERIAL" and the label on bedding made in whole, or in part, from secondhand materials shall be yellow in color and shall state "SECONDHAND MATERIALS". Such labels shall also comply with rules issued by the department regarding label dimension, format, informational content, wording, letter size, material, means of placement and affixing to the bedding, and other relevant factors.

2. A person may not remove, deface or alter in whole, or part, a label or any statement on a label to defeat the provisions of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038**.

3. Labels required by sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038** shall be permanently affixed.

4. No person may make a false or misleading statement on any label required pursuant to sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038**.

421.011. FORM AND SIZE OF BEDDING LABELS, APPROVED BY DIRECTOR — LABELING REQUIREMENTS. — 1. The director of the department of health shall approve the form and size of labels, the fabric of which the labels are made and the wording and statements on such labels, provided for in sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038**.

2. Labels required pursuant to sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038** shall be securely attached to the article of bedding or such filling material at the site of the manufacturer, in a conspicuous place where the label can be easily examined.

3. Labels required by sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038** shall have printing only on one side. No advertising matter may be placed on any label or any other printed matter not required by the provisions of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038**.

421.022. BEDDING MATERIAL GRADES, SPECIFICATIONS AND TOLERANCES ESTABLISHED BY DEPARTMENT OF HEALTH — RULEMAKING AUTHORITY. — The department of health may establish grades, specifications and tolerances for the kinds and qualities of materials which are used or intended to be used in the manufacture, repair or renovation of used bedding or used filling materials and may approve or adopt designations and

rules which are not in conflict with any provisions of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**, for the labeling of articles filled, with such materials.

421.028. REGISTRATION OF BEDDING MANUFACTURERS, RENOVATORS AND SANITIZERS — PERMITS ISSUED, PROCEDURE, FEES. — 1. Each bedding manufacturer, renovator or sanitizer shall register with and obtain an initial permit and permit number from the department, which permit shall be renewed annually.

2. Upon timely request by an applicant for an initial permit, the department shall recognize a valid registry, license, permit or factory number issued by another state or jurisdiction, provided that, the applicant complies with all requirements established by the department for issuance of a permit number in this state.

3. The department shall set fees for each class of initial and annual renewal permits, including, but not limited to, manufacturers, renovators and sanitizers in amounts that are reasonable and necessary to defray, but shall not substantially exceed, the cost of administering sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**.

421.031. RANDOM TESTING AND INSPECTION PERMITTED, WHEN — PENALTIES FOR VIOLATIONS — TEMPORARY RESTRAINING ORDER ISSUED, WHEN — PENALTY FOR MISLABELING. — 1. The department may, at its discretion, randomly conduct bedding and materials product tests and inspections of the premises of any bedding manufacturer, renovator or sanitizer for the purpose of determining whether such person complies with the provisions of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038** and the department's rules adopted pursuant to sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**.

2. If the department finds probable cause to believe that an article of bedding violates any provisions of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**, it may, as appropriate under the circumstances, embargo, remove, recall, condemn, destroy or otherwise dispose of bedding found to violate any provisions of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**.

3. The department may deny, suspend or revoke an initial or renewal permit of any person that violates any provision of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**. Each day of a continuing violation constitutes a separate violation. Any person who violates any provision of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038** is guilty of a class A misdemeanor. The court may order restitution in addition to any other penalty provided in sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**.

4. The department may petition for a temporary restraining order to restrain a continuing violation of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038** or a threat of a continuing violation of sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**, provided such violation or threatened violation creates an immediate threat to the public's health and safety.

5. A manufacturer, renovator or seller that knowingly attaches to bedding, or sells bedding bearing, a label stating that the product is made from all new materials, and has actual knowledge or reason to believe or suspect that such bedding is made in whole, or in part, from secondhand materials is guilty of a class A misdemeanor. Each bedding product that is found to be falsely labeled in this respect constitutes a separate violation.

421.034. RULEMAKING AUTHORITY. — 1. The department may adopt all rules necessary to implement sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**]** **421.005 to 421.038**, including rules regarding:

(1) Mandatory label dimensions, format, informational content, including the name, address and permit number of the manufacturer, renovator or sanitizer, working, letter size, material, placement and affixing specifications and other relevant requirements;

(2) The procedures and requirements for the application, issuance, renewal, denial, suspension and revocation of each class of permit, including, but not limited to, manufacturers, renovators, sanitizers and sellers;

(3) Adequate notice and opportunity for hearing for persons potentially subject to denial, suspension or revocation; and

(4) Any other substantive, interpretative or procedural rules necessary to implement sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038**.

2. In setting standards and procedures pursuant to sections **[**198.077 and 198.530, RSMo, and sections 421.005 to 421.031**] 421.005 to 421.038**, including those to protect the public's health and safety, the department may issue rules incorporating by reference uniform standards, norms or testing procedures that are issued, promulgated or accepted by recognized government, public or industry organizations.

Approved July 10, 2001

SB 111 [SB 111]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows Department of Revenue to enter federal-state agreement to recognize disabled persons' license plates.

AN ACT to repeal section 301.142, RSMo 2000, relating to license plates for the physically disabled, and to enact in lieu thereof one new section relating to the same subject, with a penalty provision.

SECTION

A. Enacting clause.

301.142. Physically disabled, temporarily disabled, defined — plates for disabled and placard for windshield, issued when — death of disabled person, effect — lost or stolen placard, replacement of, fee — recertification and review by director, when — penalties for certain fraudulent acts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 301.142, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 301.142, to read as follows:

301.142. PHYSICALLY DISABLED, TEMPORARILY DISABLED, DEFINED — PLATES FOR DISABLED AND PLACARD FOR WINDSHIELD, ISSUED WHEN — DEATH OF DISABLED PERSON, EFFECT — LOST OR STOLEN PLACARD, REPLACEMENT OF, FEE — RECERTIFICATION AND REVIEW BY DIRECTOR, WHEN — PENALTIES FOR CERTAIN FRAUDULENT ACTS. — 1. As used in this section the term "physically disabled" means a natural person who is a blind person, as defined in section 8.700, RSMo, or a natural person with disabilities which limit or impair the ability to walk, as determined by a licensed physician as follows:

(1) The person cannot walk fifty feet without stopping to rest; or

(2) The person cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

(3) Is restricted by lung disease to such an extent that the person's forced respiratory expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or

(4) Uses portable oxygen; or

(5) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as class III or class IV according to standards set by the American Heart Association; or

(6) Is severely limited in the applicant's ability to walk due to an arthritic, neurological, or orthopedic condition.

2. "Temporarily disabled person" means a physically disabled person whose disability or incapacity can be expected to last for not more than one hundred eighty days.

3. Owners of motor vehicles who are residents of the state of Missouri, and who are physically disabled, owners of motor vehicles operated at least fifty percent of the time by a physically disabled person, or owners of motor vehicles used to transport physically disabled members of the owner's household may obtain disabled person license plates. Such owners, upon application, accompanied by the documents and fees provided for in this section, and by state motor vehicle laws relating to registration and licensing of motor vehicles shall be issued motor vehicle license plates for vehicles, other than commercial vehicles with a gross weight in excess of twenty-four thousand pounds, upon which shall be inscribed the international wheelchair accessibility symbol and the word "disabled" in addition to a combination of letters and numbers. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Handicapped parking places may only be used when a physically disabled occupant is in the motor vehicle at the time of parking or when a physically disabled person is being delivered or collected by a properly marked vehicle which is parked for the sole use of the physically disabled person. No vehicle shall park in the access aisle. Such parking violation shall be an infraction. The use of a vehicle displaying a disabled license plate or windshield placard to park in a parking space designated for the disabled by a person not transporting the individual for whom the license or placard was issued shall be an infraction. Upon conviction thereof, violators shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars.

4. No additional fee shall be paid to the director of revenue for the issuance of the special license plates provided in this section, except for special personalized license plates and other license plates described in this subsection. Priority for any specific set of special license plates shall be given to the applicant who received the number in the immediately preceding license period subject to the applicant's compliance with the provisions of this section and any applicable rules or regulations issued by the director. If determined feasible by the advisory committee established in section 301.129, any special license plate issued pursuant to this section may be adapted to also include the international wheelchair accessibility symbol and the word "disabled" as prescribed in subsection 3 of this section and such plate may be issued to any applicant who meets the requirements of this section and the other appropriate provision of this chapter, subject to the requirements and fees of the appropriate provision of this chapter.

5. Any physically disabled person, or the parent or guardian of any such person, or any not for profit group, organization, or other entity which transports more than one physically disabled person, may apply to the director of revenue for a removable windshield placard to be hung from the rearview mirror of a parked motor vehicle. When there is no rearview mirror, the placard shall be displayed on the dashboard on the driver's side. The removable windshield placard shall conform to the specifications, in respect to size, color, and content, as set forth in federal regulations published by the Department of Transportation. The fee for each removable windshield placard shall be two dollars and the removable windshield placard shall be renewed every year. Only one removable placard may be issued to an applicant who has been issued disabled person license plates. Upon request, one additional windshield placard shall be issued

to an applicant who has not been issued disabled person license plates. A temporary windshield placard shall be issued to any physically disabled person, or the parent or guardian of any such person who otherwise qualifies except that the physical disability, in the opinion of the physician, is not expected to exceed a period of one hundred eighty days. The temporary windshield placard shall conform to the specifications, in respect to size, color, and content, as set forth in federal regulations published by the Department of Transportation. The fee for the temporary windshield placard shall be two dollars. Upon request, one additional temporary windshield placard shall be issued to an applicant. Temporary windshield placards shall be issued upon presentation of the physician's statement provided by this section and shall be displayed in the same manner as removable windshield placards. A person or entity shall be qualified to possess and display a temporary removable windshield placard for six months and the placard may be renewed once for an additional six months if a physician's statement pursuant to subsection 6 of this section is supplied to the director of revenue at the time of renewal. The placard shall be renewable only by the person or entity to which the placard was originally issued. Any placard issued pursuant to this section shall only be used when a physically disabled occupant is in the motor vehicle at the time of parking or when a physically disabled person is being delivered or collected by a properly marked vehicle which is parked for the sole use of the physically disabled person.

6. Application for license plates or windshield placards issued pursuant to this section shall be made to the director of revenue and shall be accompanied by a statement signed by a licensed physician which certifies that the applicant, user, or member of the applicant's household is a physically disabled person as defined by this section. The physician's statement shall be on a form prescribed by the director of revenue which shall include the physician's license number. If it is the professional opinion of the physician who issues the statement that the physical disability of the applicant, user, or member of the applicant's household is permanent, this shall be noted on the statement. In such instances, the applicant shall present the physician's statement which states that the applicant's disability is permanent to the director of revenue the first time the applicant applies for license plates or a removable windshield placard. The applicant shall not be required to obtain a new physician's statement each time that the applicant applies for or renews license plates or a removable windshield placard; but, the applicant shall present a physician's statement each time the applicant applies for a temporary windshield placard or renews a temporary windshield placard. Such physician's statement shall state the expiration date for the temporary windshield placard. If the physician fails to record an expiration date on the physician's statement, the director shall issue the temporary windshield placard for a period of thirty days. The director of revenue upon receiving a physician's statement pursuant to this subsection shall check with the state board of registration for the healing arts created in section 334.120, RSMo, or the Missouri state board of chiropractic examiners established in section 331.090, RSMo, with respect to physician's statements signed by licensed chiropractors, or with the board of optometry established in section 336.130, RSMo, with respect to physician's statements signed by licensed optometrists, or the state board of podiatric medicine created in section 330.100, RSMo, with respect to physician's statements signed by physicians of the foot or podiatrists to determine whether the physician is duly licensed and registered pursuant to law. The boards shall cooperate with the director and shall supply information requested pursuant to this subsection. The director may, in cooperation with the boards which shall assist the director, establish a list of all physicians' names and of any other information necessary to administer this subsection within the department of revenue if the director determines that such listing is necessary to carry out the provisions of this subsection.

7. Where the owner's application is based on the fact that the vehicle is used at least fifty percent of the time by a physically disabled person, the applicant shall submit an affidavit stating this fact, in addition to the physician's statement. The affidavit shall be signed by both the owner of the vehicle and the physically disabled person. The applicant shall be required to submit this affidavit with each application for license plates.

8. The director of revenue shall enter into reciprocity agreements with other states **or the federal government** for the purpose of recognizing disabled person license plates or windshield placards issued to physically disabled persons **[**in those states**]**.

9. When a person to whom disabled person license plates or a removable or temporary windshield placard or both have been issued dies, the personal representative of such person shall return the plates or placards or both to the director of revenue under penalty of law. The director of revenue may order any person issued disabled person license plates or windshield placards to submit to an examination by a chiropractor, osteopath, or physician, or to such other investigation as will determine whether such person qualifies for the special plates or placards. If such person refuses to submit or is found to no longer qualify for special plates or placards provided for in this section, the director of revenue shall collect the special plates or placards, and shall furnish license plates to replace the ones collected as provided by this chapter.

10. In the event a removable or temporary windshield placard is lost, stolen, or mutilated, the lawful holder thereof shall, within five days, file with the director of revenue an application and an affidavit stating such fact, in order to purchase a new placard. The fee for the replacement windshield placard shall be two dollars.

11. Beginning after September 1, 1998, and prior to August 31, 1999, the director of revenue shall authorize a one-time recertification and review of all permanent disabled person license plates and windshield placards, including physician's license numbers and related information that the director has on file pursuant to subsection 6 of this section to determine if such numbers and information are current and correct. The director shall require the presentation of a new physician's statement and other information deemed necessary by the director to administer the provisions of this section. The recertification and review shall be conducted in a manner as determined by the director.

12. Fraudulent application, renewal, issuance, procurement or use of disabled person license plates or windshield placards shall be a class A misdemeanor. It is a class B misdemeanor for a physician, chiropractor, podiatrist or optometrist to certify that an individual or family member is qualified for a license plate or windshield placard based on a disability, the diagnosis of which is outside their scope of practice or if there is no basis for the diagnosis.

Approved June 13, 2001

SB 130 [HCS SB 130]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Requires placement of warning signs in establishments licensed to sell or serve alcoholic beverages.

AN ACT to amend chapter 311, RSMo, by adding thereto one new section relating to liquor control.

SECTION
A. Enacting clause.
311.299. Warning sign displayed, liquor licenses — violations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 311, RSMo, is amended by adding thereto one new section, to be known as section 311.299, to read as follows:

311.299. WARNING SIGN DISPLAYED, LIQUOR LICENSES — VIOLATIONS. — 1. Any person who is licensed pursuant to this chapter to sell or serve alcoholic beverages at any establishment shall place on the premises of such establishment a warning sign as described in this section. Such sign shall be at least eleven inches by fourteen inches and shall read "WARNING: Drinking alcoholic beverages during pregnancy may cause birth defects.". The licensee shall display such sign in a conspicuous place on the licensed premises.

2. Any employee of the supervisor of liquor control may report a violation of this section to the supervisor, and the supervisor shall issue a warning to the licensee of the violation.

3. Notwithstanding the provisions of section 311.880 to the contrary, no person who violates the provisions of this section shall be guilty of a crime.

Approved June 26, 2001

SB 142 [SB 142]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows owners of different classes of motor vehicles to apply for Korean War Veteran license plates.

AN ACT to repeal section 301.464, RSMo 2000, relating to license plates, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
301.464. Korean War veteran, special license plates.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 301.464, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 301.464, to read as follows:

301.464. KOREAN WAR VETERAN, SPECIAL LICENSE PLATES. — Any person who served in the Korean war and was honorably discharged from such service may apply for special motor vehicle license plates, either solely or jointly, for issuance **[**either for any passenger motor vehicle subject to the registration fees provided in section 301.055, or for a nonlocal property carrying commercial motor vehicle licensed for a gross weight of nine thousand one pounds to twelve thousand pounds as provided in section 301.057, whether such vehicle is owned solely or jointly**]** **for any vehicle the person owns, either solely or jointly, other than an apportioned motor vehicle or commercial motor vehicle licensed in excess of eighteen thousand pounds**. Any such person shall make application for the special license plates on a form provided by the director of revenue and furnish such proof of service in the Korean war and status as an honorably discharged veteran as the director may require. Upon presentation of the proof of eligibility and annual payment of the fee required for personalized license plates prescribed by section 301.144, and other fees and documents which may be required by law, the director shall then issue license plates bearing letters or numbers or a combination thereof as determined by the advisory committee established in section 301.129, with the words "KOREAN WAR VETERAN" in placeof the words "SHOW-ME-STATE". Such plates shall also bear an image of the Korean war service medal. The plates shall be clearly visible at night and shall be

aesthetically attractive, as prescribed by section 301.130. No more than one set of special license plates shall be issued pursuant to this section to a qualified applicant. License plates issued pursuant to this section shall not be transferable to any other person except that any registered co-owner of the motor vehicle may operate the motor vehicle for the duration of the year licensed in the event of the death of the qualified person.

Approved June 7, 2001

SB 151 [CCS#2 HCS SCS SB 151]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Prohibits insurers from placing applicants in high risk coverage categories based on no prior insurance coverage.

AN ACT to amend chapter 379, RSMo, by adding thereto three new sections relating to motor vehicle insurance.

SECTION
A. Enacting clause.
379.124. Definitions.
379.126. Refusal to issue policy based on the lack of prior motor vehicle coverage prohibited, when.
379.127. Violation deemed unfair trade practice.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 379, RSMo, is amended by adding thereto three new sections, to be known as sections 379.124, 379.126 and 379.127, to read as follows:

379.124. DEFINITIONS. — As used in sections 379.124 to 379.127, the following words and terms shall mean:

(1) "Adverse underwriting decision", placement by an insurer or agent of a risk with a residual market mechanism, an unauthorized insurer or an insurer which specializes in substandard risks;

(2) "Insurer", any insurance company, association or exchange authorized to issue policies of automobile insurance in the state of Missouri;

(3) "Policy", an automobile policy providing automobile liability coverage, uninsured motorists coverage, automobile medical payments coverage or automobile physical damage coverage insuring a private passenger automobile owned by an individual or partnership.

379.126. REFUSAL TO ISSUE POLICY BASED ON THE LACK OF PRIOR MOTOR VEHICLE COVERAGE PROHIBITED, WHEN. — 1. No insurer shall refuse to write a policy for an applicant or base an adverse underwriting decision solely on the fact that the applicant has never purchased such a policy of motor vehicle insurance where the lack of motor vehicle insurance coverage is due to the applicant serving in the armed services and the applicant has not operated a motor vehicle in violation of any financial responsibility or compulsory insurance requirement within the past twelve months.

2. No insurer shall refuse to write a policy for an applicant or base an adverse underwriting decision solely on the fact that the applicant has not owned or been covered

by such a policy of motor vehicle insurance during any specified period immediately preceding the date of application where the lack of motor vehicle insurance coverage is due to the applicant serving in the armed services and the applicant has not operated a motor vehicle in violation of any financial responsibility or compulsory insurance requirement within the past twelve months. Nothing in this subsection shall prohibit an insurer from giving a discount for such an applicant that has been covered by a policy of insurance during such a specified period.

3. Nothing in this section shall prohibit an insurer from basing an adverse underwriting decision on an applicant's previous driving record where such record indicates that the applicant is a substandard risk.

4. In order to establish compliance with this section, an insurer may require any applicant claiming to meet the criteria of subsection 1 or 2 of this section to provide proof of eligibility in a manner as the insurer may prescribe.

379.127. VIOLATION DEEMED UNFAIR TRADE PRACTICE. — Violation of section 375.126 shall be unfair trade practice as defined by section 375.930 to 375.948, RSMo, and shall be subject to all of the provisions and penalties provided by such sections.

Approved July 10, 2001

SB 178 [HCS SCS SB 178]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Amends law relating to amending a condominium association's bylaws and prohibits tying of services.

AN ACT to repeal sections 347.189 and 448.3-106, RSMo 2000, relating to ownership of property, and to enact in lieu thereof two new sections relating to the same subject.

SECTION

A. Enacting clause.
347.189. Requires filing property control affidavit in certain cities, including Kansas City.
448.003-106. Bylaws.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 347.189 and 448.3-106, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 347.189 and 448.3-106, to read as follows:

347.189. REQUIRES FILING PROPERTY CONTROL AFFIDAVIT IN CERTAIN CITIES, INCLUDING KANSAS CITY. — Any limited liability company that owns and rents or leases real property**, or owns unoccupied real property,** located within any home rule city with a population of more than four hundred thousand inhabitants which is located in more than one county, shall file with that city's clerk an affidavit listing the name and address of at least one person, who has management control and responsibility for the real property owned and leased or rented by the limited liability company**, or owned by the limited liability company and unoccupied**.

448.003-106. BYLAWS. — 1. The bylaws of the association shall provide for:

(1) The number of members of the executive board and the titles of the officers of the association;

(2) Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) The method of amending the bylaws **subject to the following:**

(a) Unless the declarant otherwise agrees in writing to permit an amendment to the bylaws in accordance with paragraph (b) of this subdivision, for so long as a declarant is the owner of units representing an aggregate of ten percent or more of the units in which votes in the association are allocated, the bylaws may only be amended with the affirmative vote of at least sixty-seven percent of the unit owners of units to which votes in the association are allocated; and

(b) After the declarant ceases to own ten percent or more of the units to which votes in the association are allocated, the bylaws may only be amended with the affirmative vote of a majority of the unit owners of units to which the votes in the association are allocated.

2. Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

Approved July 13, 2001

SB 179 [SB 179]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Exempts residential mortgage brokers who post sufficient bond from conducting annual certified audits.

AN ACT to repeal section 443.851, RSMo 2000, relating to mortgage brokers, and to enact in lieu thereof one new section relating to the same subject.

SECTION

A. Enacting clause.

443.851. Audit required annually of licensee's books and accounts — scope of audit — filed with director, authority for rules — alternative to audit requirements.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 443.851, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 443.851, to read as follows:

443.851. AUDIT REQUIRED ANNUALLY OF LICENSEE'S BOOKS AND ACCOUNTS — SCOPE OF AUDIT — FILED WITH DIRECTOR, AUTHORITY FOR RULES — ALTERNATIVE TO AUDIT REQUIREMENTS. — 1. At the end of the licensee's fiscal year, but in no case more than twelve months after the last audit conducted pursuant to this section and section 443.853, each residential mortgage licensee shall cause the licensee's books and accounts to be audited by a

certified public accountant not connected with such licensee. The books and records of all persons licensed pursuant to sections 443.800 to 443.893 shall be maintained on an accrual basis. The audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements in the report and must be performed in accordance with generally accepted accounting principles and generally accepted auditing standards.

2. As used in this section and section 443.853, the term "expression of opinion" includes either:

(1) An unqualified opinion;

(2) A qualified opinion;

(3) A disclaimer of opinion; or

(4) An adverse opinion.

3. If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons therefor shall be fully explained. An opinion, qualified as to a scope limitation, shall not be acceptable.

4. The audit report shall be filed with the director within one hundred twenty days of the audit date. The report filed with the director shall be certified by the certified public accountant conducting the audit. The director may promulgate rules regarding late audit reports.

5. A licensee may meet the requirements of this section without filing an audit report by posting and maintaining a surety bond in an amount of one hundred thousand dollars in a form specified by the director and payable to the director.

Approved July 10, 2001

SB 186 [HS HCS SCS SB 186]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows persons licensed to provide small loans to also furnish deferred presentment services.

AN ACT to repeal sections 139.050, 139.052, 139.053, 148.064, 301.600, 362.044, 362.105, 362.106, 362.119, 362.170, 362.270, 362.325, 362.335, 362.495, 362.935, 362.942, 367.100, 367.215, 367.500, 367.503, 367.506, 367.509, 367.512, 367.515, 367.518, 367.521, 367.524, 367.527, 367.530, 379.316, 379.321, 379.356, 379.425, 379.888, 408.052, 408.140, 408.500 and 513.430, RSMo 2000, and section 367.100 as enacted by Senate Substitute for House Committee Substitute for House Bill No. 738, ninety-first general assembly, first regular session, relating to financial services, and to enact in lieu thereof forty-four new sections relating to the same subject, with penalty provisions.

SECTION

A.	Enacting clause.
139.050.	Taxes payable in installments — exemption for property taxes paid by financial institutions.
139.052.	Taxes payable in installments may be adopted by ordinance in any county — delinquency, interest rate — payment not to affect right of taxpayer to protest — exemption for property taxes paid by financial institutions.
139.053.	Property taxes, how paid — estimates — interest — refunds — exemption for property taxes paid by financial institutions.
148.064.	Ordering and limit reductions for certain credits — consolidated return — transfers of credits — effect of repeal of corporation franchise tax — pass through of tax credits by S corporation bank.
301.600.	Liens and encumbrances, how perfected — effect of on vehicles and trailers brought into state — security procedures for verifying electronic notices.
362.044.	Stockholders' meetings — notice — business by proxy, cancellation of meetings.

362.105. Powers and authority of banks and trust companies.
362.106. Additional powers.
362.109. Restrictions on orders and ordinances of political subdivisions.
362.119. Investment in trust companies by bank, limitations — definition.
362.170. Unimpaired capital, defined — restrictions on loans, and total liability to any one person.
362.270. Organizational meeting of directors.
362.325. Charter amended — procedure — notice — duty of director — appeal.
362.335. Officers and employees — limitation on powers.
362.495. When payment and withdrawals may be suspended.
362.935. Director of finance to administer — rules and orders authorized.
362.942. Bank holding company with operations principally out of state, acquiring Missouri bank, limitations, severability clause, effect.
367.100. Definitions.
367.100. Definitions.
367.215. Failure to file audit report, effect of — surety bond posted, when.
367.500. Definitions.
367.503. Allows division of finance to regulate lending on titled property.
367.506. Licensure of title lenders, penalty.
367.509. Qualifications of applicants, fee, license issued, when.
367.512. Title loan requirements — liability of borrower.
367.515. Interest rate for title loans, maximum — fee charged — repossession charge, when.
367.518. Title loan agreements, contents, form.
367.521. Redemption of certificate of title — expiration or default, lender may proceed against collateral.
367.524. Records of loan agreements.
367.525. Notice to borrower prior to acceptance of title loan application.
367.527. Limitations of title lenders.
367.530. Safekeeping of certificates of title — liability insurance maintained, when — liability of title lender.
367.531. Applicability to certain transactions.
367.532. Violations, penalties.
379.316. Scope of act (section 379.017 and sections 379.316 to 379.361).
379.321. Rating plans to be filed with director, when — informational filings.
379.356. Excessive premiums and rebates prohibited.
379.425. Law applicable to certain classes of insurance — exceptions.
379.888. Definitions for sections 379.888 to 379.893 — notice to insured, when — department to notify insurers.
408.052. Points prohibited, exception — penalties for illegal points — violation a misdemeanor — default charge authorized, when, exceptions.
408.140. Additional charges or fees prohibited, exceptions — no finance charges if purchases are paid for within certain time limit, exception.
408.500. Unsecured loans under five hundred dollars, licensure of lenders, interest rates and fees allowed — penalties for violations — cost of collection expenses — notice required, form.
408.510. Licensure of consumer installment lenders — interest and fees allowed.
427.220. Commissions and consideration paid to depositary institutions not to be more limited than those paid to insurance agencies — definitions.
513.430. Property exempt from attachment — benefits from certain employee plans, exception — bankruptcy proceeding, fraudulent transfers, exception — construction of section.
1. Denial of claim, disclosure by applicant not required.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 139.050, 139.052, 139.053, 148.064, 301.600, 362.044, 362.105, 362.106, 362.119, 362.170, 362.270, 362.325, 362.335, 362.495, 362.935, 362.942, 367.100, 367.215, 367.500, 367.503, 367.506, 367.509, 367.512, 367.515, 367.518, 367.521, 367.524, 367.527, 367.530, 379.316, 379.321, 379.356, 379.425, 379.888, 408.052, 408.140, 408.500 and 513.430, RSMo 2000, and section 367.100 as enacted by Senate Substitute for House Committee Substitute for House Bill No. 738, ninety-first general assembly, first regular session, are repealed and forty-four new sections enacted in lieu thereof, to be known as sections 139.050, 139.052, 139.053, 148.064, 301.600, 362.044, 362.105, 362.106, 362.109, 362.119, 362.170, 362.270, 362.325, 362.335, 362.495, 362.935, 367.100, 367.215, 367.500, 367.503, 367.506, 367.509, 367.512, 367.515, 367.518, 367.521, 367.524, 367.525, 367.527, 367.530, 367.531, 367.532, 379.316, 379.321, 379.356, 379.425, 379.888, 408.052, 408.140, 408.500, 408.510, 427.220, 513.430 and 1, to read as follows:

139.050. TAXES PAYABLE IN INSTALLMENTS — EXEMPTION FOR PROPERTY TAXES PAID BY FINANCIAL INSTITUTIONS. — 1. In all constitutional charter cities in this state which have seven hundred thousand inhabitants or more, all current and all delinquent general, school and city taxes may be paid entirely, or in installments of at least twenty-five percent of the taxes, and the delinquent taxes shall bear interest at the rate provided by section 140.100, RSMo, and shall be subject to the fees provided by law.

2. The director of revenue shall issue receipts for the partial payments.

3. Subsection 1 of this section shall not apply to payment for real property taxes by financial institutions, as defined in section 381.410, RSMo, who pay tax obligations which they service from escrow accounts, as defined in Title 24, Part 3500, Section 17, Code of Federal Regulation, as amended.

139.052. TAXES PAYABLE IN INSTALLMENTS MAY BE ADOPTED BY ORDINANCE IN ANY COUNTY — DELINQUENCY, INTEREST RATE — PAYMENT NOT TO AFFECT RIGHT OF TAXPAYER TO PROTEST — EXEMPTION FOR PROPERTY TAXES PAID BY FINANCIAL INSTITUTIONS. — 1. The governing body of any county may by ordinance or order provide for the payment of all or any part of current and delinquent real property taxes, in such installments and on such terms as the governing body deems appropriate. Additionally, the county legislative body may limit the right to pay such taxes in installments to certain classes of taxpayers, as may be prescribed by ordinance or order. Any delinquent taxes shall bear interest at the rate provided by section 140.100, RSMo, and shall be subject to the fees provided by law.

2. The county official charged with the duties of the collector shall issue receipts for any installment payments.

3. Installment payments made at any time during a tax year shall not affect the taxpayer's right to protest the amount of such tax payments under applicable provisions of law.

4. Subsection 1 of this section shall not apply to payment for real property taxes by financial institutions, as defined in section 381.410, RSMo, who pay tax obligations which they service from escrow accounts, as defined in Title 24, Part 3500, Section 17, Code of Federal Regulation, as amended.

139.053. PROPERTY TAXES, HOW PAID — ESTIMATES — INTEREST — REFUNDS — EXEMPTION FOR PROPERTY TAXES PAID BY FINANCIAL INSTITUTIONS. — 1. The governing body of any county, excluding township counties, may by ordinance or order provide for the payment of all or any part of current real and personal property taxes which are owed, at the option of the taxpayer, on an annual, semiannual or quarterly basis at such times as determined by such governing body.

2. The ordinance shall provide the method by which the amount of property taxes owed for the current tax year in which the payments are to be made shall be estimated. The collector shall submit to the governing body the procedures by which taxes will be collected pursuant to the ordinance or order. The estimate shall be based on the previous tax year's liability. A taxpayer's payment schedule shall be based on the estimate divided by the number of pay periods in which payments are to be made. The taxpayer shall at the end of the tax year pay any amounts owed in excess of the estimate for such year. The county shall at the end of the tax year refund to the taxpayer any amounts paid in excess of the property tax owed for such year. No interest shall be paid by the county on excess amounts owed to the taxpayer. Any refund paid the taxpayer pursuant to this subsection shall be an amount paid by the county only once in a calendar year.

3. If a taxpayer fails to make an installment payment of a portion of the real or personal property taxes owed to the county, then such county may charge the taxpayer interest on the amount of property taxes still owed for that year.

4. Any governing body enacting the ordinance or order specified in this section shall first agree to provide the county collector with reasonable and necessary funds to implement the ordinance or order.

5. Subsection 1 of this section shall not apply to payment for real property taxes by financial institutions, as defined in section 381.410, RSMo, who pay tax obligations which they service from escrow accounts, as defined in Title 24, Part 3500, Section 17, Code of Federal Regulation, as amended.

148.064. ORDERING AND LIMIT REDUCTIONS FOR CERTAIN CREDITS — CONSOLIDATED RETURN — TRANSFERS OF CREDITS — EFFECT OF REPEAL OF CORPORATION FRANCHISE TAX — PASS THROUGH OF TAX CREDITS BY S CORPORATION BANK. — 1. Notwithstanding any law to the contrary, this section shall determine the ordering and limit reductions for certain taxes and tax credits which may be used as credits against various taxes paid or payable by banking institutions. Except as adjusted in subsections 2, 3 and 6 of this section, such credits shall be applied in the following order until used against:

(1) The tax on banks determined under subdivision (2) of subsection 2 of section 148.030;

(2) The tax on banks determined under subdivision (1) of subsection 2 of section 148.030;

(3) The state income tax in section 143.071, RSMo.

2. The tax credits permitted against taxes payable pursuant to subdivision (2) of subsection 2 of section 148.030 shall be utilized first and include taxes referenced in subdivisions (2) and (3) of subsection 1 of this section, which shall be determined without reduction for any tax credits identified in subsection 5 of this section which are used to reduce such taxes. Where a banking institution subject to this section joins in the filing of a consolidated state income tax return under chapter 143, RSMo, the credit allowed under this section for state income taxes payable under chapter 143, RSMo, shall be determined based upon the consolidated state income tax liability of the group and allocated to a banking institution, without reduction for any tax credits identified in subsection 5 of this section which are used to reduce such consolidated taxes as provided in chapter 143, RSMo.

3. The taxes referenced in subdivisions (2) and (3) of subsection 1 of this section may be reduced by the tax credits in subsection 5 of this section without regard to any adjustments in subsection 2 of this section.

4. To the extent that certain tax credits which the taxpayer is entitled to claim are transferable, such transferability may include transfers among such taxpayers who are members of a single consolidated income tax return, and this subsection shall not impact other tax credit transferability.

5. For the purpose of this section, the tax credits referred to in subsections 2 and 3 shall include tax credits available for economic development, low-income housing and neighborhood assistance which the taxpayer is entitled to claim for the year, including by way of example and not of limitation, tax credits pursuant to the following sections: section 32.115, RSMo, section 100.286, RSMo, and sections 135.110, 135.225, 135.352 and 135.403, RSMo.

6. For tax returns filed on or after January 1, 2001, including returns based on income in the year 2000, and after, a banking institution shall be entitled to an annual tax credit equal to one-sixtieth of one percent of its outstanding shares and surplus employed in this state if the outstanding shares and surplus exceed one million dollars, determined in the same manner as in section 147.010, RSMo. This tax credit shall be taken as a dollar-for-dollar credit against the bank tax provided for in subdivision (2) of subsection 2 of section 148.030; if such bank tax was already reduced to zero by other credits, then against the corporate income tax provided for in chapter 143, RSMo.

7. In the event the corporation franchise tax in chapter 147, RSMo, is repealed by the general assembly, there shall also be a reduction in the taxation of banks as follows: in lieu of the loss of the corporation franchise tax credit reduction in subdivision (1) of subsection 2 of section 148.030, the bank shall receive a tax credit equal to one and one-half percent

of net income as determined in this chapter. This subsection shall take effect at the same time the corporation franchise tax in chapter 147, RSMo, is repealed.

8. An S corporation bank or bank holding company that otherwise qualifies to distribute tax credits to its shareholders, shall pass through any tax credits referred to in subsection 5 of this section to its shareholders as otherwise provided for in subsection 9 of section 143.471, RSMo, with no reductions or limitations resulting from the transfer through such S corporation, and on the same terms originally made available to the original taxpayer, subject to any original dollar or percentage limitations on such credits, and when such S corporation is the original taxpayer, treating such S corporation as having not elected Subchapter S status.

9. Notwithstanding any law to the contrary, in the event the corporation franchise tax in chapter 147, RSMo, is repealed by the general assembly, after such repeal all Missouri taxes of any nature and type imposed directly or used as a tax credit against the bank's taxes, shall be passed through to the S corporation bank or bank holding company shareholder in the form otherwise permitted by law, except for the following:

(1) Credits for taxes on real estate and tangible personal property owned by the bank and held for lease or rental to others;

(2) Contributions paid pursuant to the unemployment compensation tax law of Missouri; or

(3) State and local sales and use taxes collected by the bank on its sales of tangible personal property and the services enumerated in chapter 144, RSMo.

301.600. LIENS AND ENCUMBRANCES, HOW PERFECTED — EFFECT OF ON VEHICLES AND TRAILERS BROUGHT INTO STATE — SECURITY PROCEDURES FOR VERIFYING ELECTRONIC NOTICES. — 1. Unless excepted by section 301.650, a lien or encumbrance on a motor vehicle or trailer, as defined by section 301.010, is not valid against subsequent transferees or lienholders of the motor vehicle or trailer who took without knowledge of the lien or encumbrance unless the lien or encumbrance is perfected as provided in sections 301.600 to 301.660.

2. **Subject to the provisions of section 301.620,** a lien or encumbrance on a motor vehicle or trailer is perfected by the delivery to the director of revenue of a notice of a lien in a format as prescribed by the director of revenue. **To perfect a subordinate lien, the notice of lien must be accompanied by the documents required to be delivered to the director pursuant to subdivision (3) of section 301.620.** The notice of lien is perfected as of the time of its creation if the delivery of such notice to the director of revenue is completed within thirty days thereafter, otherwise as of the time of the delivery. A notice of lien shall contain the name and address of the owner of the motor vehicle or trailer and the secured party, a description of the motor vehicle or trailer, including the vehicle identification number, and such other information as the department of revenue may prescribe. A notice of lien substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

3. Liens may secure future advances. The future advances may be evidenced by one or more notes or other documents evidencing indebtedness and shall not be required to be executed or delivered prior to the date of the future advance lien securing them. The fact that a lien may secure future advances shall be clearly stated on the security agreement and noted as "subject to future advances" on the notice of lien and noted on the certificate of ownership if the motor vehicle or trailer is subject to only one notice of lien. To secure future advances when an existing lien on a motor vehicle or trailer does not secure future advances, the lienholder shall file a notice of lien reflecting the lien to secure future advances. A lien to secure future advances is perfected in the same time and manner as any other lien, except as follows: proof of the lien for future advances is maintained by the department of revenue; however, there shall be

additional proof of such lien when the notice of lien reflects such lien for future advances, is receipted for by the department of revenue, and returned to the lienholder.

4. If a motor vehicle or trailer is subject to a lien or encumbrance when brought into this state, the validity and effect of the lien or encumbrance is determined by the law of the jurisdiction where the motor vehicle or trailer was when the lien or encumbrance attached, subject to the following:

(1) If the parties understood at the time the lien or encumbrance attached that the motor vehicle or trailer would be kept in this state and it was brought into this state within thirty days thereafter for purposes other than transportation through this state, the validity and effect of the lien or encumbrance in this state is determined by the law of this state;

(2) If the lien or encumbrance was perfected pursuant to the law of the jurisdiction where the motor vehicle or trailer was when the lien or encumbrance attached, the following rules apply:

(a) If the name of the lienholder is shown on an existing certificate of title or ownership issued by that jurisdiction, the lien or encumbrance continues perfected in this state;

(b) If the name of the lienholder is not shown on an existing certificate of title or ownership issued by that jurisdiction, the lien or encumbrance continues perfected in this state three months after a first certificate of ownership of the motor vehicle or trailer is issued in this state, and also thereafter if, within the three-month period, it is perfected in this state. The lien or encumbrance may also be perfected in this state after the expiration of the three-month period; in that case perfection dates from the time of perfection in this state;

(3) If the lien or encumbrance was not perfected pursuant to the law of the jurisdiction where the motor vehicle or trailer was when the lien or encumbrance attached, it may be perfected in this state; in that case perfection dates from the time of perfection in this state;

(4) A lien or encumbrance may be perfected pursuant to paragraph (b) of subdivision (2) or subdivision (3) of this subsection either as provided in subsection 2 or 3 of this section or by the lienholder delivering to the director of revenue a notice of lien or encumbrance in the form the director of revenue prescribes and the required fee.

5. By rules and regulations, the director of revenue shall establish a security procedure for the purpose of verifying that an electronic notice of lien or notice of satisfaction of a lien on a motor vehicle or trailer given as permitted in sections 301.600 to 301.640 is that of the lienholder, verifying that an electronic notice of confirmation of ownership and perfection of a lien given as required in section 301.610 is that of the director of revenue, and detecting error in the transmission or the content of any such notice. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures or similar security devices. Comparison of a signature on a communication with an authorized specimen signature shall not by itself be a security procedure.

362.044. STOCKHOLDERS' MEETINGS — NOTICE — BUSINESS BY PROXY, CANCELLATION OF MEETINGS. — 1. Stockholders' meetings may be held at such place, within this state, as may be prescribed in the bylaws. In the absence of any such provisions, all meetings shall be held at the principal banking house of the bank or trust company.

2. An annual meeting of stockholders for the election of directors shall be held on a day which each bank or trust company shall fix by its bylaws; and if no day be so provided, then on the second Monday of January.

3. Special meetings of the stockholders may be called by the directors or upon the written request of the owners of a majority of the stock.

4. Notice of annual or special stockholders' meetings shall state the place, day and hour of the meeting, and shall be published at least ten days prior to the meeting and once a week after the first publication with the last publication being not more than seven days before the day fixed for such meeting, in some daily or weekly newspaper printed and published in the city or town in which the bank or trust company is located, and if there be none, then in some newspaper

printed and published in the county in which the bank or trust company is located, and if there be none, then in some newspaper printed and published in an adjoining county. A written or printed copy of the notice shall be delivered personally or mailed to each stockholder at least ten but not more than fifty days prior to the day fixed for the meeting, and shall state, in addition to the place, day and hour, the purpose of any special meeting or an annual meeting at which the stockholders will consider a change in the par value of the corporation stock, the issuance of preferred shares, a change in the number of directors, an increase or reduction of the capital stock of the bank or trust company, a change in the length of the corporate life, an extension or change of its business, a change in its articles to avail itself of the privileges and provisions of this chapter, or any other change in its articles in any way not inconsistent with the provisions of this chapter. Any stockholder may waive notice by causing to be delivered to the secretary during, prior to or after the meeting a written, signed waiver of notice, or by attending such meeting except where a stockholder attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

5. Unless otherwise provided in the articles of incorporation, a majority of the outstanding shares entitled to vote at any meeting represented in person or by proxy shall constitute a quorum at a meeting of stockholders; provided, that in no event shall a quorum consist of less than a majority of the outstanding shares entitled to vote, but less than a quorum shall have the right successively to adjourn the meeting to a specified date no longer than ninety days after the adjournment, and no notice need be given of the adjournment to shareholders not present at the meeting. Every decision of a majority of the quorum shall be valid as a corporate act of the bank or trust company unless a larger vote is required by this chapter.

6. (1) The stockholders of the bank or trust company may approve business by proxy and cancel any stockholders' meeting, provided:

(a) The stockholders are sent notice of such stockholders' meeting and a proxy referred to in this section;

(b) Within such proxy the stockholders are given the opportunity to approve or disapprove the cancellation of such stockholders' meeting;

(c) At least eighty percent of such bank or trust company's stock is voted by proxy; and

(d) All stockholders voting by proxy vote to cancel such stockholders' meeting.

(2) No business shall be voted on by proxy other than that expressly set out and clearly explained by the proxy material. If such stockholders' meeting is canceled by proxy, notice of such cancellation shall be sent to all stockholders at least five days prior to the date originally set for such stockholders' meeting. The corporate secretary shall reflect all proxy votes by subject and in chronological order in the board of directors' minute book. The notice for such stockholders' meeting shall state the effective date of any of the following: new directors' election, change in corporate structure and any other change requiring stockholder approval.

7. The voting shareholder or shareholders of the bank or trust company may transact all business required at an annual or special stockholders' meeting by unanimous written consent.

362.105. POWERS AND AUTHORITY OF BANKS AND TRUST COMPANIES. — 1. Every bank and trust company created under the laws of this state may for a fee or other consideration, directly or through a subsidiary company, and upon complying with any applicable licensing statute:

(1) Conduct the business of receiving money on deposit and allowing interest thereon not exceeding the legal rate or without allowing interest thereon, and of buying and selling exchange, gold, silver, coin of all kinds, uncurrent money, of loaning money upon real estate or personal property, and upon collateral of personal security at a rate of interest not exceeding that allowed by law, and also of buying, investing in, selling and discounting negotiable and nonnegotiable paper of all kinds, including bonds as well as all kinds of commercial paper; and for all loans and discounts made, the corporation may receive and retain the interest in advance;

(2) Accept for payment, at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding one year; provided, that no bank or trust company shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid-up and unimpaired capital stock and surplus fund, except with the approval of the director under such general regulations as to amount of acceptances as the director may prescribe;

(3) Purchase and hold, for the purpose of becoming a member of a Federal Reserve Bank, so much of the capital stock thereof as will qualify it for membership in the reserve bank pursuant to an act of Congress, approved December 23, 1913, entitled "The Federal Reserve Act" and any amendments thereto; to become a member of the Federal Reserve Bank, and to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any member by the Federal Reserve Act and any amendments thereto. The member bank or trust company and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all the provisions of this chapter relating to banks or trust companies;

(4) Subscribe for and purchase such stock in the Federal Deposit Insurance Corporation and to make such payments to and to make such deposits with the Federal Deposit Insurance Corporation and to pay such assessments made by such corporation as will enable the bank or trust company to obtain the benefits of the insurance of deposits under the act of Congress known as "The Banking Act of 1933" and any amendments thereto;

(5) Invest in a bank service corporation as defined by the act of Congress known as the "Bank Service Corporation Act", Public Law 87-856, as approved October 23, 1962, to the same extent as provided by that act or any amendment thereto;

(6) **Hold a noncontrolling equity interest in any business entity that conducts only activities that are financial in nature or incidental to financial activity or that is established pursuant to subdivision (16) of subsection 1 of this section where the majority of the stock or other interest is held by Missouri banks, Missouri trust companies, national banks located in Missouri, or any foreign bank with a branch or branches in Missouri, or any combination of these financial institutions; provided that if the entity is defined pursuant to Missouri law as any type of financial institution subsidiary or other type of entity subject to special conditions or regulations, those conditions and regulations shall remain applicable, and provided that such business entity may be formed as any type of business entity, in which each investor's liability is limited to the investment in and loans to the business entity as otherwise provided by law;**

(7) Receive upon deposit for safekeeping personal property of every description, and to own or control a safety vault and rent the boxes therein;

[(7)**]** **(8)** Purchase and hold the stock of one safe deposit company organized and existing under the laws of the state of Missouri and doing a safe deposit business on premises owned or leased by the bank or trust company at the main banking house and any branch operated by the bank or trust company; provided, that the purchasing and holding of the stock is first duly authorized by resolution of the board of directors of the bank or trust company and by the written approval of the director, and that all of the shares of the safe deposit company shall be purchased and held, and shall not be sold or transferred except as a whole and not be pledged at all, all sales or transfers or pledges in violation hereof to be void;

[(8)**]** **(9)** Act as the fiscal or transfer agent of the United States, of any state, municipality, body politic or corporation and in such capacity to receive and disburse money, to transfer, register and countersign certificates of stock, bonds and other evidences of indebtedness;

[(9)**]** **(10)** Purchase, lease, hold or convey real property for the following purposes:

(a) With the approval of the director, plots whereon there is or may be erected a building or buildings suitable for the convenient conduct of its functions or business or for customer or employee parking even though a revenue may be derived from portions not required for its own use, and as otherwise permitted by law;

(b) Real property conveyed to it in satisfaction or part satisfaction of debts previously contracted in the course of its business;

(c) Real property purchased at sales under judgment, decrees or liens held by it;

[(10)**] (11)** Purchase, hold and become the owner and lessor of personal property acquired upon the specific request of and for use of a customer; and, in addition, leases that neither anticipate full purchase price repayment on the leased asset, nor require the lease to cover the physical life of the asset, other than those for motor vehicles which will not be used by bank or trust company personnel, and may incur such additional obligations as may be incident to becoming an owner and lessor of the property, subject to the following limitations:

(a) Lease transactions do not result in loans for the purpose of section 362.170, but the total amount disbursed under leasing obligations or rentals by any bank to any person, partnership, association, or corporation shall at no time exceed the legal loan limit permitted by statute except upon the written approval of the director of finance;

(b) Lease payments are in the nature of rent rather than interest, and the provisions of chapter 408, RSMo, are not applicable;

[(11)**] (12)** Contract with another bank or trust company, bank service corporation or other partnership, corporation, association or person, within or without the state, to render or receive services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, financial counseling, or similar services, or the storage, transmitting or processing of any information or data; except that, the contract shall provide, to the satisfaction of the director of finance, that the party providing such services to a bank or trust company will be subject to regulation and examination to the same extent as if the services were being performed by the bank or trust company on its own premises. This subdivision shall not be deemed to authorize a bank or trust company to provide any customer services through any system of electronic funds transfer at places other than bank premises;

[(12)**] (13)** Purchase and hold stock in a corporation whose only purpose is to purchase, lease, hold or convey real property of a character which the bank or trust company holding stock in the corporation could itself purchase, lease, hold or convey pursuant to the provisions of paragraph (a) of subdivision (9) of this subsection; provided, the purchase and holding of the stock is first duly authorized by resolution of the board of directors of the bank or trust company and by the written approval of the director, and that all of the shares of the corporation shall be purchased and held by the bank or trust company and shall not be sold or transferred except as a whole;

[(13)**] (14)** Purchase and sell investment securities, without recourse, solely upon order and for the account of customers; and establish and maintain one or more mutual funds and offer to the public shares or participations therein. Any bank which engages in such activity shall comply with all provisions of chapter 409, RSMo, regarding the licensing and registration of sales personnel for mutual funds so offered, provided that such banks shall register as a broker-dealer with the office of the commissioner of securities and shall consent to supervision and inspection by that office and shall be subject to the continuing jurisdiction of that office;

[(14)**] (15)** Make debt or equity investments in corporations or projects, whether for profit or not for profit, designed to promote the development of the community and its welfare, provided that the aggregate investment in all such corporations and in all such projects does not exceed five percent of the unimpaired capital of the bank, and provided that this limitation shall not apply to loans made under the authority of other provisions of law, and other provisions of law shall not limit this subdivision;

[(15)**] (16)** Offer through one or more subsidiaries any products and services which a national bank may offer through its financial subsidiaries, subject to the limitations that are applicable to national bank financial subsidiaries, and provided such bank or trust company meets the division of finance safety and soundness considerations. This subdivision is enacted

to provide in part competitive equality with national banks' powers under the Gramm-Leach-Bliley Act of 1999, Public Law 106-102.

2. In addition to the power and authorities granted in subsection 1 of this section, and notwithstanding any limitations therein, a bank or trust company may**:**

(1) Invest up to its legal loan limit in a building or buildings suitable for the convenient conduct of its business, including, but not limited to, a building or buildings suitable for the convenient conduct of its functions, parking for bank, trust company and leasehold employees and customers and real property for landscaping. Revenue may be derived from renting or leasing a portion of the building or buildings and the contiguous real estate; provided that, such bank or trust company has assets of at least two hundred million dollars**; and**

(2) Loan money on real estate and handle escrows, settlements and closings on real estate for the benefit of the bank's customers, as a core part of the banking business, notwithstanding any other provision of law to the contrary.

3. In addition to the powers and authorities granted in subsection 1 of this section, every trust company created under the laws of this state shall be authorized and empowered to:

(1) Receive money in trust and to accumulate the same at such rate of interest as may be obtained or agreed upon, or to allow such interest thereon as may be prescribed or agreed;

(2) Accept and execute all such trusts and perform such duties of every description as may be committed to it by any person or persons whatsoever, or any corporation, and act as assignee, receiver, trustee and depositary, and to accept and execute all such trusts and perform such duties of every description as may be committed or transferred to it by order, judgment or decree of any courts of record of this state or other states, or of the United States;

(3) Take, accept and hold, by the order, judgment or decree of any court of this state, or of any other state, or of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal property in trust, and to execute and perform any and all the legal and lawful trusts in regard to the same upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by the order, judgment, decree, gift, grant, assignment, transfer, devise or bequest;

(4) Buy, invest in and sell all kinds of stocks or other investment securities;

(5) Execute, as principal or surety, any bond or bonds required by law to be given in any proceeding, in law or equity, in any of the courts of this state or other states, or of the United States;

(6) Act as trustee, personal representative, or conservator or in any other like fiduciary capacity;

(7) Act as attorney-in-fact or agent of any person or corporation, foreign or domestic, in the management and control of real or personal property, the sale or conveyance of same, the investment of money, and for any other lawful purpose.

4. (1) In addition to the powers and authorities granted in this section, the director of finance may, from time to time, with the approval of the state banking board, issue orders granting such other powers and authorities as have been granted to financial institutions subject to the supervision of the federal government to:

(a) State-chartered banks and trust companies which are necessary to enable such banks and trust companies to compete;

(b) State-chartered banks and trust companies to establish branches to the same extent that federal law permits national banks to establish branches;

(c) Subsidiaries of state-chartered banks and trust companies to the same extent powers are granted to national bank subsidiaries to enable such banks and trust companies to compete;

(d) State-chartered banks and trust companies to establish trust representative offices to the same extent national banks are permitted such offices.

(2) The orders shall be promulgated as provided in section 361.105, RSMo, and shall not be inconsistent with the constitution and the laws of this state.

5. As used in this section, the term "subsidiary" shall include one or more business entities of which the bank or trust company is the owner, provided the owner's liability is limited by the investment in and loans to the subsidiary as otherwise provided for by law.

6. A bank or trust company to which authority is granted by regulation in subsection 4 of this section, based on the population of the political subdivision, may continue to exercise such authority for up to five years after the appropriate decennial census indicates that the population of the town in which such bank or trust company is located has exceeded the limits provided for by regulation pursuant to subsection 4 of this section.

362.106. ADDITIONAL POWERS. — In addition to the powers authorized by section 362.105:

(1) A bank or trust company may exercise all powers necessary, proper **[**and**]** **or** convenient to effect any **[**or all**]** of the purposes for which the bank or trust company has been formed **and any powers incidental to the business of banking**;

(2) A bank or trust company may offer any direct and indirect benefits to a bank customer for the purpose of attracting deposits or making loans, provided said benefit is not otherwise prohibited by law, and the income or expense of such activity is nominal;

(3) Notwithstanding any other law to the contrary, every bank or trust company created under the laws of this state may, for a fee or other consideration, directly or through a subsidiary company, and upon complying with any applicable licensing statute, acquire and hold the voting stock of one or more corporations the activities of which are managing or owning agricultural property, subdividing and developing real property and building residential housing or commercial improvements on such property, and owning, renting, leasing, managing, operating for income and selling such property; provided that, the total of all investments, loans and guarantees made pursuant to the authority of this subdivision shall not exceed five percent of the total assets of the bank or trust company as shown on the next preceding published report of such bank or trust company to the director of finance, unless the director of the division of finance approves a higher percentage by regulation, but in no event shall such percentage exceed that allowed national banks by the appropriate regulatory authority, and, in addition to the investments permitted by this subdivision, a bank or trust company may extend credit, not to exceed the lending limits of section 362.170, to each of the corporations in which it has invested. No provision of this section authorizes a bank or trust company to own or operate, directly or through a subsidiary company, a real estate brokerage company**;**

(4) Notwithstanding any other law to the contrary except for bank regulatory powers in chapter 361, RSMo, powers incidental to the business of banking shall include the authority of every Missouri bank, for a fee or other consideration, and upon complying with any applicable licensing and registration law, to conduct any activity that national banks are expressly authorized by federal law to conduct, if such Missouri bank meets the prescribed standards, provided that powers conferred by this subdivision:

(a) Shall always be subject to the same limitations applicable to a national bank for conducting the activity;

(b) Shall be subject to applicable Missouri insurance law;

(c) Shall be subject to applicable Missouri licensing and registration law for the activity;

(d) Shall be subject to the same treatment prescribed by federal law; and any enabling federal law declared invalid by a court of competent jurisdiction or by the responsible federal chartering agency shall be invalid for the purposes of this subdivision; and

(e) May be exercised by a Missouri bank after that institution has notified the director of its intention to exercise such specific power at the close of the notice period and the director, in response, has made a determination that the proposed activity is not an unsafe or unsound practice and such institution meets the prescribed standards required

for the activity permitted national banks in the interpretive letter. The director may either take no action or issue an interpretive letter to the institution more specifically describing the activity permitted, and any limitations on such activity. The notice provided by the institution requesting such activity shall include copies of the specific law authorizing the power for national banks, and documentation indicating that such institution meets the prescribed standards. The notice period shall be thirty days but the director may extend it for an additional sixty days. After a determination has been made authorizing any activity pursuant to this subdivision, any Missouri bank may exercise such power as provided in subdivision (5) of this section without giving notice.

(5) When a determination is made pursuant to paragraph (e) of subdivision (4) of this section, the director shall issue a public interpretative letter or statement of no action regarding the specific power authorized pursuant to subdivision (4) of this section; such interpretative letters and statements of no action shall be made with the name of the specific institution and related identifying facts deleted. Such interpretative letters and statements of no action shall be published on the division of finance public Internet website, and filed with the office of the secretary of state for ten days prior to effectiveness. Any other Missouri bank may exercise any power approved by interpretative letter or statement of no action of the director pursuant to this subdivision; provided, the institution meets the requirements of the interpretative letter or statement of no action and the prescribed standards required for the activity permitted national banks in the interpretive letter. Such Missouri bank shall not be required to give the notice pursuant to paragraph (e) of subdivision (4) of this section. For the purposes of this subdivision and subdivision (4) of this section, "activity" shall mean the offering of any product or service or the conducting of any other activity; "federal law" shall mean any federal statute or regulation or an interpretive letter issued by the Office of the Comptroller of the Currency; "Missouri bank" shall mean any bank or trust company created pursuant to the laws of this state.

362.109. RESTRICTIONS ON ORDERS AND ORDINANCES OF POLITICAL SUBDIVISIONS. — Notwithstanding any law to the contrary, any order or ordinance by any political subdivision shall be consistent with and not more restrictive than state law and regulations governing lending or deposit taking entities regulated by the Division of Finance or the Division of Credit Unions within the Department of Economic Development.

362.119. INVESTMENT IN TRUST COMPANIES BY BANK, LIMITATIONS — DEFINITION. — Any bank organized **[**under**] pursuant to** the laws of this state may invest not to exceed five percent of its capital, surplus and undivided profits in shares of stock in any new or existing trust company or companies **or any new or existing holding company or companies controlling a trust company or companies, provided that such holding company is either a bank holding company or is a holding company with the sole purpose of owning a trust company,** if the direct or indirect ownership of a majority of such stock or class of stock in such **[**trust company or companies**] entity or entities** is restricted to banks authorized to do business in the state of Missouri. For purposes of this section, the term "ownership of a majority of such stock or class of stock" does not mean or infer that such owner or owners have a controlling interest or voting interest in such trust company or companies**, and the term "entity" means a trust company, bank holding company or a holding company that is not a bank holding company but that has the sole purpose of owning a trust company**.

362.170. UNIMPAIRED CAPITAL, DEFINED — RESTRICTIONS ON LOANS, AND TOTAL LIABILITY TO ANY ONE PERSON. — 1. As used in this section, the term "unimpaired capital" includes common and preferred stock, capital notes, the surplus fund, undivided profits and any

reserves, not subject to known charges as shown on the next preceding published report of the bank or trust company to the director of finance.

2. No bank or trust company subject to the provisions of this chapter shall:

(1) Directly or indirectly, lend to any individual, partnership, corporation, limited liability company or body politic, either by means of letters of credit, by acceptance of drafts, or by discount or purchase of notes, bills of exchange, or other obligations of the individual, partnership, corporation, limited liability company or body politic an amount or amounts in the aggregate which will exceed fifteen percent of the unimpaired capital of the bank or trust company if located in a city having a population of one hundred thousand or over; twenty percent of the unimpaired capital of the bank or trust company if located in a city having a population of less than one hundred thousand and over seven thousand; and twenty-five percent of the unimpaired capital of the bank or trust company if located elsewhere in the state, with the following exceptions:

(a) The restrictions in this subdivision shall not apply to:

a. Bonds or other evidences of debt of the government of the United States or its territorial and insular possessions, or of the state of Missouri, or of any city, county, town, village, or political subdivision of this state;

b. Bonds or other evidences of debt, the issuance of which is authorized under the laws of the United States, and as to which the government of the United States has guaranteed or contracted to provide funds to pay both principal and interest;

c. Bonds or other evidences of debt of any state of the United States other than the state of Missouri, or of any county, city or school district of the foreign state, which county, city, or school district shall have a population of fifty thousand or more inhabitants, and which shall not have defaulted for more than one hundred twenty days in the payment of any of its general obligation bonds or other evidences of debt, either principal or interest, for a period of ten years prior to the time of purchase of the investment and provided that the bonds or other evidences of debt shall be a direct general obligation of the county, city, or school district;

d. Loans to the extent that they are insured or covered by guaranties or by commitments or agreements to take over or purchase made by any department, bureau, board, commission, or establishment of the United States or of the state of Missouri, including any corporation, wholly owned, directly or indirectly, by the United States or of the state of Missouri, pursuant to the authority of any act of Congress or the Missouri general assembly heretofore or hereafter adopted or amended or pursuant to the authority of any executive order of the President of the United States or the governor of Missouri heretofore or hereafter made or amended under the authority of any act of Congress heretofore or hereafter adopted or amended, and the part of the loan not so agreed to be purchased or discounted is within the restrictive provisions of this section;

e. Obligations to any bank or trust company in the form of notes of any person, copartnership, association, corporation or limited liability company, secured by not less than a like amount of direct obligations of the United States which will mature in not exceeding five years from the date the obligations to the bank are entered into;

f. Loans to the extent they are secured by a segregated deposit account in the lending bank if the lending bank has obtained a perfected security interest in such account;

g. Evidences of debt which are direct obligations of, or which are guaranteed by, the Government National Mortgage Association, the Federal National Mortgage Association, the Student Loan Marketing Association, the Federal Home Loan Banks, the Federal Farm Credit Bank or the Federal Home Loan Mortgage Corporation, or evidences of debt which are fully collateralized by direct obligations of, and which are issued by, the Government National Mortgage Association, the Federal National Mortgage Association, the Student Loan Marketing Association, a Federal Home Loan Bank, the Federal Farm Credit Bank or the Federal Home Loan Mortgage Corporation;

(b) The total liabilities to the bank or trust company of any individual, partnership, corporation or limited liability company may equal but not exceed thirty-five percent of the

unimpaired capital of the bank or trust company; provided, that all of the total liabilities in excess of the legal loan limit of the bank or trust company as defined in this subdivision are upon paper based upon the collateral security of warehouse receipts covering agricultural products or the manufactured or processed derivatives of agricultural products in public elevators and public warehouses subject to state supervision and regulation in this state or in any other state of the United States, under the following conditions: first, that the actual market value of the property held in store and covered by the receipt shall at all times exceed by at least fifteen percent the amount loaned upon it; and second, that the property covered by the receipts shall be insured to the full market value thereof against loss by fire and lightning, the insurance policies to be issued by corporations or individuals licensed to do business by the state in which the property is located, and when the insurance has been used to the limit that it can be secured, then in corporations or with individuals licensed to do an insurance business by the state or country of their incorporation or residence; and all policies covering property on which the loan is made shall have endorsed thereon, "loss, if any, payable to the holder of the warehouse receipts"; and provided further, that in arriving at the amount that may be loaned by any bank or trust company to any individual, partnership, corporation or limited liability company on elevator or warehouse receipts there shall be deducted from the thirty-five percent of its unimpaired capital the total of all other liabilities of the individual, partnership, corporation or limited liability company to the bank or trust company;

(c) In computing the total liabilities of any individual to a bank or trust company there shall be included all liabilities to the bank or trust company of any partnership of which the individual is a member, and any loans made for the individual's benefit or for the benefit of the partnership; of any partnership to a bank or trust company there shall be included all liabilities of and all loans made for the benefit of the partnership; of any corporation to a bank or trust company there shall be included all loans made for the benefit of the corporation and of any limited liability company to a bank or trust company there shall be included all loans made for the benefit of the limited liability company;

(d) The purchase or discount of drafts, or bills of exchange drawn in good faith against actually existing values, shall not be considered as money borrowed within the meaning of this section; and the purchase or discount of negotiable or nonnegotiable **[**installment consumer**]** paper which carries the full recourse endorsements or guaranty or agreement to repurchase of the person, copartnership, association, corporation or limited liability company negotiating the same, shall not be considered as money borrowed by the endorser or guarantor or the repurchaser within the meaning of this section, provided that the files of the bank or trust company acquiring the paper contain the written certification by an officer designated for this purpose by its board of directors that the responsibility of the makers has been evaluated and the acquiring bank or trust company is relying primarily upon the makers thereof for the payment of the paper;

(e) For the purpose of this section, a loan guaranteed by an individual who does not receive the proceeds of the loan shall not be considered a loan to the guarantor;

(f) Investments in mortgage-related securities, as described in the Secondary Mortgage Market Enhancement Act of 1984, P.L. 98-440, excluding those described in subparagraph g. of paragraph (a) of subdivision (1) of subsection 2 of this section, shall be subject to the restrictions of this section, provided that a bank or trust company may invest up to two times its legal loan limit in any such securities that are rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization;

(2) Nor shall any of its directors, officers, agents, or employees, directly or indirectly purchase or be interested in the purchase of any certificate of deposit, pass book, promissory note, or other evidence of debt issued by it, for less than the principal amount of the debt, without interest, for which it was issued. Every bank or trust company or person violating the provisions of this subdivision shall forfeit to the state the face value of the note or other evidence of debt so purchased;

(3) Make any loan or discount on the security of the shares of its own capital stock, or be the purchaser or holder of these shares, unless the security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition unless the time is extended by the finance director. Any bank or trust company violating any of the provisions of this subdivision shall forfeit to the state the amount of the loan or purchase;

(4) Knowingly lend, directly or indirectly, any money or property for the purpose of enabling any person to pay for or hold shares of its stock, unless the loan is made upon security having an ascertained or market value of at least fifteen percent more than the amount of the loan. Any bank or trust company violating the provision of this subdivision shall forfeit to the state the amount of the loan;

(5) No salaried officer of any bank or trust company shall use or borrow for himself or herself, directly or indirectly, any money or other property belonging to any bank or trust company of which the person is an officer, in excess of ten percent of the unimpaired capital of the bank or trust company, nor shall the total amount loaned to all salaried officers of any bank or trust company exceed twenty-five percent of the unimpaired capital of the bank or trust company. Where loans and a line of credit are made to salaried officers, the loans and line of credit shall first be approved by a majority of the board of directors or of the executive or discount committee, the approval to be in writing and the officer to whom the loans are made, not voting. The form of the approval shall be as follows:

We, the undersigned, constituting a majority of the ..... of the ..... (bank or trust company), do hereby approve a loan of $..... or a line of credit of $....., or both, to ....., it appearing that the loan or line of credit, or both, is not more than 10 percent of the unimpaired capital of ..... (bank or trust company); it further appearing that the loan (money actually advanced) will not make the aggregate of loans to salaried officers more than 25 percent of the unimpaired capital of the bank or trust company.

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Dated this ..... day of ....., 20.....

Provided, if the officer owns or controls a majority of the stock of any other corporation, a loan to that corporation shall be considered for the purpose of this subdivision as a loan to the officer. Every bank or trust company or officer thereof knowingly violating the provisions of this subdivision shall, for each offense, forfeit to the state the amount lent;

(6) Invest or keep invested in the stock of any private corporation, except as provided in this chapter.

3. Provided, that the provisions in this section shall not be so construed as in any way to interfere with the rules and regulations of any clearinghouse association in this state in reference to the daily balances; and provided, that this section shall not apply to balances due from any correspondent subject to draft.

4. Provided, that a trust company which does not accept demand deposits shall be permitted to make loans secured by a first mortgage or deed of trust on real estate to any individual, partnership, corporation or limited liability company, and to deal and invest in the interest-bearing obligations of any state, or any city, county, town, village, or political subdivision thereof, in an amount not to exceed its unimpaired capital, the loans on real estate not to exceed sixty-six and two-thirds percent of the appraised value of the real estate.

5. Any officer, director, agent, clerk, or employee of any bank or trust company who willfully and knowingly makes or concurs in making any loan, either directly or indirectly, to any individual, partnership, corporation or limited liability company or by means of letters of credit,

by acceptance of drafts, or by discount or purchase of notes, bills of exchange or other obligation of any person, partnership, corporation or limited liability company, in excess of the amounts set out in this section, shall be deemed guilty of a class C felony.

6. A trust company in existence on October 15, 1967, or a trust company incorporated thereafter which does not accept demand deposits, may invest in but shall not invest or keep invested in the stock of any private corporation an amount in excess of fifteen percent of the capital and surplus fund of the trust company; provided, however, that this limitation shall not apply to the ownership of the capital stock of a safe deposit company as provided in section 362.105; nor to the ownership by a trust company in existence on October 15, 1967, or its stockholders of a part or all of the capital stock of one bank organized under the laws of the United States or of this state, nor to the ownership of a part or all of the capital of one corporation organized under the laws of this state for the principal purpose of receiving savings deposits or issuing debentures or loaning money on real estate or dealing in or guaranteeing the payment of real estate securities, or investing in other securities in which trust companies may invest under this chapter; nor to the continued ownership of stocks lawfully acquired prior to January 1, 1915**, and the prohibition for investments in this subsection shall not apply to investments otherwise provided by law other than subdivision (4) of subsection 3 of section 362.105**.

7. Any bank or trust company to which the provisions of subsection 2 of this section apply may continue to make loans pursuant to the provisions of subsection 2 of this section for up to five years after the appropriate decennial census indicates that the population of the city in which such bank or trust company is located has exceeded the limits provided in subsection 2 of this section.

362.270. ORGANIZATIONAL MEETING OF DIRECTORS. — Within thirty days after the date on which the annual meeting of the stockholders is held the directors elected at such meeting shall, after subscribing the oath required in section 362.250, hold a meeting at which they shall elect a **chief executive officer which the board may designate as** president **or another appropriate title,** from their own number, one or more vice presidents, and such other officers as are provided for by the bylaws to be elected annually.

362.325. CHARTER AMENDED — PROCEDURE — NOTICE — DUTY OF DIRECTOR — APPEAL. — 1. Any bank or trust company may, at any time, and in any amount, increase or, with the approval of the director, reduce its capital stock (as to its authorized but unissued shares, its issued shares, and its capital stock as represented by such issued shares), including a reduction of capital stock by reverse stock split, change its name, change or extend its business or the length of its corporate life, avail itself of the privileges and provisions of this chapter or otherwise change its articles of agreement in any way not inconsistent with the provisions of this chapter, with the consent of the persons holding a majority of the stock of the bank or trust company, which consent shall be obtained at an annual meeting or at a special meeting of the shareholders called for that purpose. A bank or trust company may, but shall not be obligated to, issue a certificate for a fractional share, and, by action of its board of directors, may in lieu thereof, pay cash equal to the value of the fractional share.

2. The meeting shall be called and notice given as provided in section 362.044.

3. If, at any time and place specified in the notice, stockholders shall appear in person or by proxy, in number representing not less than a majority of all the shares of stock of the bank or trust company, they shall organize by choosing one of the directors chairman of the meeting, and a suitable person for secretary, and proceed to a vote of those present in person or by proxy.

4. If, upon a canvass of the vote at the meeting, it is ascertained that the proposition has carried, it shall be so declared by the president of the meeting and the proceedings entered of record.

5. When the full amount of the proposed increase has been bona fide subscribed and paid in cash to the board of directors of the bank or trust company or the change has been duly

authorized, then a statement of the proceedings, showing a compliance with the provisions of this chapter, the increase of capital actually subscribed and paid up or the change shall be made out, signed and verified by the affidavit of the president and countersigned by the cashier, or secretary, and such statement shall be acknowledged by the president and one certified copy filed in the public records of the division of finance.

6. Upon the filing of the certified copy the director shall promptly satisfy himself or herself that there has been a compliance in good faith with all the requirements of the law relating to the increase, decrease or change, and when he or she is so satisfied he or she shall issue a certificate that the bank or trust company has complied with the law made and provided for the increase or decrease of capital stock, and the amount to which the capital stock has been increased or decreased or for the change in the length of its corporate life or any other change provided for in this section. Thereupon, the capital stock of the bank or trust company shall be increased or decreased to the amount specified in the certificate or the length of the corporate life of the bank shall be changed or other authorized change made as specified in the certificate. The certificate, or certified copies thereof, shall be taken in all the courts of the state as evidence of the increase, decrease or change.

7. Provided, however, that if the change undertaken by the bank or trust company in its articles of agreement shall provide for the relocation of the bank or trust company in another community, the director shall make or cause to be made an examination to ascertain whether the convenience and needs of the new community wherein the bank desires to locate are such as to justify and warrant the opening of the bank therein and whether the probable volume of business at the new location is sufficient to ensure and maintain the solvency of the bank and the solvency of the then existing banks and trust companies at the location, without endangering the safety of any bank or trust company in the locality as a place of deposit of public and private moneys, and, if the director, as a result of the examination, be not satisfied in the particulars mentioned or either of them, he or she may refuse to issue the certificate applied for, in which event he or she shall forthwith give notice of his or her refusal to the bank applying for the certificate, which if it so desires may, within ten days thereafter, appeal from the refusal to the state banking board.

8. All certificates issued by the director of finance relating to amendments to the charter of any bank shall be provided to the bank or trust company and one certified copy filed in the public records of the division of finance.

9. The board of directors may designate a chief executive officer, and such officer will replace the president for purposes of this section.

362.335. OFFICERS AND EMPLOYEES — LIMITATION ON POWERS. — 1. The directors may appoint and remove any cashier, secretary or other officer or employee at pleasure.

2. The cashier, secretary or any other officer or employee shall not endorse, pledge or hypothecate any notes, bonds or other obligations received by the corporation for money loaned, until such power and authority is given the cashier, secretary or other officer or employee by the board of directors, pursuant to a resolution of the board of directors, a written record of which proceedings shall first have been made; and a certified copy of the resolution, signed by the president and cashier or secretary with the corporate seal annexed, shall be conclusive evidence of the grant of this power; and all acts of endorsing, pledging and hypothecating done by the cashier, secretary or other officer or employee of the bank or trust company without the authority from the board of directors shall be null and void. **The board of directors may designate a chief executive officer who is not the president, but who shall perform all the duties of the president required by this section.**

362.495. WHEN PAYMENT AND WITHDRAWALS MAY BE SUSPENDED. — Whenever unusual withdrawals from any bank or trust company doing a banking business in this state, organized under the laws of this state are being made, or whenever in the judgment of the president and cashier or president and secretary of such bank or trust company and/or the board

of directors thereof, unusual withdrawals are about to be made, such officers and/or directors are hereby authorized to suspend payment of checks of depositors and any and all other withdrawals of assets of such bank or trust company for a period of six banking days. **The board of directors may designate a chief executive officer who is not the president, but who shall perform all the duties of the president required by this section.**

362.935. DIRECTOR OF FINANCE TO ADMINISTER — RULES AND ORDERS AUTHORIZED. — The director of finance shall administer and carry out the provisions of sections 362.910 to 362.940 and may issue such regulations and orders as may be necessary to discharge this duty and to prevent evasion of subsection 1 of section 362.920 **[**or subsection 1 of section 362.925**]**.

[362.942. BANK HOLDING COMPANY WITH OPERATIONS PRINCIPALLY OUT OF STATE, ACQUIRING MISSOURI BANK, LIMITATIONS, SEVERABILITY CLAUSE, EFFECT. — 1. No bank holding company whose bank subsidiaries' operations are principally conducted in a state other than the state of Missouri, and which acquires control of a bank located in the state of Missouri, may acquire any other banks or establish branch banks for a two-year period beginning on the date such acquisition is consummated. During such two-year period, the bank holding company shall not be treated as a bank holding company whose bank subsidiaries' operations are principally conducted in the state of Missouri for purposes of acquiring other banks or establishing branch banks.

2. Notwithstanding any law to the contrary, nothing in this section shall limit the Missouri regional interstate banking law as contained in section 362.925.

3. The provisions of this section are severable. In the event that a court of competent jurisdiction shall enter a decision finding subsection 1 of this section unconstitutional or otherwise invalid and if such decision remains in force after all appeals therefrom have been exhausted, all remaining provisions of this section shall remain in full force and effect notwithstanding such decision and such decision shall not be given retroactive effect by any court and shall not invalidate any acquisitions completed in reliance on any provisions of law prior to the date when all such appeals have been exhausted.**]**

[367.100. DEFINITIONS. — As used in sections 367.100 to 367.200:

(1) "Consumer credit loans" shall mean loans for personal, family or household purposes in amounts of five hundred dollars or more;

(2) "Director" shall mean the director of the division of finance or such agency or agencies as may exercise the powers and duties now performed by such director;

(3) "Lender" shall mean any person engaged in the business of making consumer credit loans. A person who makes an occasional consumer credit loan or who occasionally makes loans but is not regularly engaged in the business of making consumer credit loans shall not be considered a lender subject to sections 367.100 to 367.200;

(4) "Person" shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities, excepting those corporations whose powers emanate from the laws of the United States and those which under other law are subject to the supervisory jurisdiction of the director or the director of the division of credit unions of Missouri;

(5) "Supervised business" shall mean the business of making consumer credit loans, as herein defined, of money, credit, goods, or things in action. The provisions of section 367.100(1)(b) shall not be effective until January 1, 2002.**]**

367.100. DEFINITIONS. — As used in sections 367.100 to 367.200:

(1) "Consumer credit loans" shall mean**:**

(a) Prior to January 1, 2002, loans for the benefit of or use by an individual or individuals:

[(a)**]** **a.** Secured by a security agreement or any other lien on tangible personal property or by the assignment of wages, salary or other compensation; or

[(b)**]** **b.** Unsecured and whether with or without comakers, guarantors, endorsers or sureties;

(b) Beginning January 1, 2002 and thereafter, loans for personal, family or household purposes in amounts of five hundred dollars or more;

(2) "Director" shall mean the director of the division of finance or such agency or agencies as may exercise the powers and duties now performed by such director;

(3) "Lender" shall mean any person engaged in the business of making consumer credit loans. A person who makes an occasional consumer credit loan or who occasionally makes loans but is not regularly engaged in the business of making consumer credit loans shall not be considered a lender subject to sections 367.100 to 367.200;

(4) "Person" shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities, excepting those corporations whose powers emanate from the laws of the United States and those which under other law are subject to the supervisory jurisdiction of the director **[**of the division of the finance of Missouri,**]** or the director of the division of credit unions of Missouri;

(5) "Supervised business" shall mean the business of making consumer credit loans, as herein defined, of money, credit, goods, or things in action.

367.215. FAILURE TO FILE AUDIT REPORT, EFFECT OF — SURETY BOND POSTED, WHEN. — The director of finance shall not issue a renewal license to any person or entity licensed under the provisions of sections 367.100 to 367.200 unless the audit report is furnished as required by section 367.210. **In lieu of the requirements of sections 367.205 to 367.215, the licensee may post a surety bond in the amount of one hundred thousand dollars. The bond shall be in a form satisfactory to the director and shall be issued by a bonding or insurance company authorized to do business in the state to secure compliance with all laws relative to consumer credit. If, in the opinion of the director, the bond shall at any time appear to be inadequate, insecure, exhausted, or otherwise doubtful, additional bond in a form and with surety satisfactory to the director shall be filed within fifteen days after the director gives notice to the licensee. A licensee may, in lieu of filing any bond required under this section, provide the director with a one hundred thousand dollar irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any bank, trust company, savings and loan or credit union operating in Missouri.**

367.500. DEFINITIONS. — As used in sections 367.500 to **[**367.530**]** **367.533**, unless the context otherwise requires, the following terms mean:

(1) "Borrower", **[**the owner of any titled personal property who pledges such property to a title lender**]** **a person who borrows money** pursuant to a title loan agreement;

(2) "Capital", the assets of a person less the liabilities of that person. Assets and liabilities shall be measured according to generally accepted accounting principles;

(3) "Certificate of title", a state-issued certificate of title or certificate of ownership for personal property**[**, which certificate is deposited with a title lender as security for a title loan pursuant to a title loan agreement**]**;

(4) "Director", the director of the division of finance of the department of economic development or its successor agency;

(5) "Person", any resident of the state of Missouri or any business entity formed under Missouri law or duly qualified to do business in Missouri;

(6) "Pledged property", personal property, ownership of which is evidenced and delineated by a **[**state-issued certificate of**]** title;

(7) "Title lending office" **or "title loan office"**, a location at which, or premises in which, a title lender regularly conducts business;

(8) "Title lender", a person **[**who has**]** qualified to **[**engage in the business of making**] make** title loans pursuant to sections 367.500 to **[**367.530 and**] 367.533 who** maintains at least one title lending office within **[**the boundaries of**]** the state of Missouri, which office is open for the conduct of business not less than thirty hours per week, excluding legal holidays;

(9) "Title loan agreement", a written agreement between a borrower and a title lender in a form which complies with the requirements of sections 367.500 to **[**367.530**] 367.533**. The title lender shall **[**retain physical possession of the certificate of title for the entire length of the title loan agreement and for all renewals or extensions thereof, except to the extent necessary to**]** perfect **[**the title lender's**] its** lien pursuant to sections 301.600 to 301.660, RSMo, but **[**shall**] need** not **[**be required to**]** retain physical possession of the titled personal property at any time**[**. The money advanced to the borrower under a title loan agreement shall not be considered a debt of the borrower for any purpose and the borrower shall have no personal liability under a title loan agreement**]**; and

(10) "**[**Title**] Titled** personal property", any personal property **excluding property qualified to be a personal dwelling** the ownership of which is evidenced **[**and delineated**]** by a **[**state-issued**]** certificate of title.

367.503. ALLOWS DIVISION OF FINANCE TO REGULATE LENDING ON TITLED PROPERTY. — 1. The **[**division of finance**] director** shall **[**have responsibility to**]** administer and regulate **[**the provisions of**]** sections 367.500 to **[**367.530**] 367.533**. The director, deputy director, other assistants and examiners, and all special agents and other employees shall keep all information **[**obtained from persons applying for a certificate of registration as a title lender and from all persons licensed as a title lender confidential and shall not disclose such information unless required by law or judicial order**] concerning title lenders confidential as required by sections 361.070 and 361.080, RSMo**.

2. No employee of the division of finance shall have any ownership or interest in any **title loan** business **[**entity engaged in the business of title loans,**]** or receive directly or indirectly any payment or gratuity from any such entity.

3. **[**In enacting rules affecting the business of title lending,**]** The director shall **[**not limit the number of title lending certificates of registration that may be issued, but shall only**]** issue as many **[**certificates of registration**] title loan licenses** as may be applied for by qualified applicants.

4. No rule or portion of a rule promulgated pursuant to the authority of sections 367.500 to **[**367.530**] 367.533** shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

367.506. LICENSURE OF TITLE LENDERS, PENALTY. — 1. **[**It is unlawful for**]** Any person **[**to act**] who acts** as a title lender **[**unless such person has first registered and received**] without** a **[**certificate of registration from the division of finance to conduct such business in the manner and form provided pursuant to this act. Violators of the registration requirement are**] title loan license is** subject to both civil and criminal penalties.

2. All title loan agreements entered into by a person who acts in violation of the **[**registration**] licensing** requirements **[**provided in**] of** sections 367.500 to **[**367.530**] 367.533**, and all title pledges accepted by such person, shall be null and void. Any borrower who enters into a title loan agreement with a person who acts in violation of the provisions of sections 367.500 to **[**367.530**] 367.533** shall not be bound by **[**the terms of**]** such agreement, and such borrower's only liability **[**to such person**]** shall be for the return of the principal **[**sum borrowed plus interest at the rate set by statute for interest on judgments**]**.

3. The attorney general may initiate a civil action against any person **[**required to maintain a certificate of registration as a title lender**]** who acts as a title lender without **[**first obtaining such certificate**] a title loan license**. Such action shall be commenced in the circuit court for any county **[**in which such person engaged in title lending. For purposes of this section, such county

shall mean any county**]** in which the person executed any title loan agreement and any county in which any of the pledged **titled personal** property is normally kept. The civil penalty for title lending without **[**first obtaining**]** a **[**certificate of registration**] title loan license** shall be **[**a fine of**]** not less than one thousand dollars and not more than five thousand dollars for each day that a person acts in violation of the **[**registration**] licensing** requirement. If the violation of the **[**registration**] licensing** requirement is intentional or knowing, the person shall be barred from applying for a **[**certificate of registration as a title lender**] title loan license** for a period of five years from the date of the last violation.

4. A first offense violation of the **[**registration**] licensing** requirement pursuant to this section shall be a class C misdemeanor. Second and subsequent offenses shall be class A misdemeanors. For purposes of jurisdiction and venue, the crime of unlawful title lending shall be deemed to have occurred in both the county in which an unlawful title loan agreement was executed and the county in which the pledged property is normally kept.

367.509. QUALIFICATIONS OF APPLICANTS, FEE, LICENSE ISSUED, WHEN. — 1. **[**To be eligible for**]** A **[**registration certificate as a title lender, an**] title loan license** applicant must **[**be either a natural person resident in the state of Missouri or a business entity formed under the laws of the state of Missouri or a business entity qualified to conduct business in the state of Missouri, and**]** have and maintain capital of at least seventy-five thousand dollars at all times.

2. The **license** application **[**for a certificate of registration**]** shall be in writing, under oath and in the form prescribed by the director. The application shall contain the name of the applicant**[**;**],** date of formation if a business entity**[**;**],** the address of each title loan office operated or sought to be operated**[**;**],** the name and **[**resident**] residential** address of the owner **[**or**],** partners **[**or**]**, **[**if a corporation or association, of the**]** directors, trustees and principal officers**[**;**],** and such other pertinent information as the director may require. **A corporate surety bond in the principal sum of twenty thousand dollars per location shall accompany each license application. The bond shall be in a form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state in order to ensure the faithful performance of the obligations of the applicant and the applicant's agents and subagents in connection with title loan activities. An applicant or licensee may, in lieu of filing any bond required pursuant to this section, provide the director with an irrevocable letter of credit as defined in section 400.5-103, RSMo, in the amount of twenty thousand dollars per location, issued by any bank, trust company, savings and loan or credit union operating in Missouri in a form acceptable to the director.**

3. Every person **[**that has not previously been issued a certificate of registration pursuant to this section to engage in the business of title lending shall, at the time of**]** applying for **[**such certificate,**] a title loan license shall** pay **[**the sum of**]** one thousand dollars as an investigation fee**[**, which fee shall be used to cover the costs of investigating the application**]**. **[**A registered title lender may apply**] Applicants** for **[**a certificate of registration for**]** additional title lending **[**office locations, and**] licenses** shall**[**, at the time of making such application**]** pay **[**the sum of**]** one thousand dollars **per additional location** as an investigation fee**[**, which fee shall be used to cover the costs of investigating the title lender's additional title lending office location**]**. **[**In addition to the investigative fees required pursuant to this section,**]** The lender shall, beginning with the first **license** renewal **[**of said certificate**]**, pay annually to the director a fee of one thousand dollars for each **licensed** location **[**for which a certificate of registration has been issued**]**.

4. Each **[**certificate**] license** shall specify the location of the **[**specific**]** title loan office **[**to which it applies**]** and shall be conspicuously displayed therein. Before any title lending office **[**location**]** may **[**be changed or moved by the lender**] relocate**, the director shall approve such **[**change of location by endorsing the certificate or**] relocation by** mailing the licensee a new **[**certificate**] license** to that effect, without charge.

5. Upon the filing of the application, and the payment of the fee, by a person eligible to apply for a title **[**lender's certificate**]** **loan license**, the director shall issue a **[**certificate to the applicant**]** **license** to engage in the title loan business **[**under and**]** in accordance with **[**the provisions of**]** sections 367.500 to **[**367.530 for a period which shall expire the last day of December next following the date of its issuance**]** **367.533**. **The licensing year shall commence on January first and end the following December thirty-first.** Each **[**certificate**]** **license** shall be uniquely numbered and shall not be transferable or assignable. Renewal **[**certificates**]** **licenses** shall be effective for a period of one year.

367.512. TITLE LOAN REQUIREMENTS — LIABILITY OF BORROWER. — 1. **[**Any licensed title lender may engage in the business of making loans secured by a certificate of title as provided in sections 367.500 to 367.530.

2.**]** Every title loan**, and each extension or renewal of such title loan,** shall be **[**reduced to**]** **in** writing **[**in a title loan agreement. Each title loan agreement**], signed by the borrower and** shall provide **[**as follows and shall include the following terms**]** **that**:

(1) The title lender agrees to make a loan **[**of money**]** to the borrower, and the borrower agrees to give the title lender a security interest in unencumbered titled personal property **[**owned by the borrower**]**;

(2) **Whether** the borrower consents to the title lender keeping possession of the certificate of title;

(3) The borrower shall have the **[**exclusive**]** right to redeem the certificate of title by repaying the loan **[**of money**]** in full and by complying with the title loan agreement **which may be** for **[**an**]** **any** agreed period of time **[**but in any case**]** not less than thirty days;

(4) The title lender shall renew the title loan agreement **[**for additional thirty-day periods**]** upon the borrower's **written** request and the payment by the borrower of any interest **[**and fees**]** due at the time of such renewal**[**,**]**. However**,** upon the third renewal of **[**the**]** **any** title loan agreement, and **[**each**]** **any** subsequent renewal **[**thereafter**]**, the borrower shall reduce the principal **[**amount of the loan**]** by ten percent **[**of the original amount of the loan**]** until such loan is paid in full;

(5) When the **[**certificate of title is redeemed**]** **loan is satisfied**, the title lender shall release its **[**security interest in the titled personal property**]** **lien** and return the **[**personal property certificate of**]** title to the borrower;

(6) **[**Upon failure of the borrower to redeem the certificate of title at the end of the original thirty-day agreement period, or at the end of any agreed-upon thirty-day renewal or renewals thereof, the borrower shall deliver the titled personal property to the title lender at the location specified in the agreement, which location shall be no more than fifteen miles from the title lender's office where the title loan agreement was executed;

(7)**]** If the borrower **[**fails to deliver the titled personal property to the title lender**]** **defaults**, the title lender shall be allowed to take possession of the titled personal property **after compliance with chapter 400, RSMo, sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo**;

[(8)**]** **(7)** Upon obtaining possession of the titled personal property **in accordance with chapter 400, RSMo, sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo**, the title lender shall be authorized to sell the titled personal property **in accordance with chapter 400, RSMo, sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo,** and to convey to the buyer thereof good title thereto**[**, subject to the waiting periods provided for in section 367.521; and

(9) A borrower who does not redeem a pledged certificate of title shall have no personal liability to the title lender to repay principal, interest or expenses incurred in connection with the title loan, and that the title lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan agreement**]**.

[3.**]** **2.** Any borrower who obtains a title loan **[**from a title lender**]** under false pretenses by hiding or not disclosing the existence of a valid prior lien or security interest affecting the titled personal property, shall be personally liable to the title lender for the full amount stated in the title loan agreement.

367.515. INTEREST RATE FOR TITLE LOANS, MAXIMUM — FEE CHARGED — REPOSSESSION CHARGE, WHEN. — **[**1. The maximum rate of interest that a title lender shall contract for and receive for making and carrying any title loan authorized by sections 367.500 to 367.530 shall not exceed one and one-half percent per month on the amount of such loans. Title lenders may charge, contract for, and receive a fee, which shall not be deemed interest, to defray the ordinary cost of operations. Such fee may include the title lenders cost for investigating the title, appraisal of the titled personal property, insuring the titled personal property while in the possession of the borrower, documenting and recording the transactions, perfecting a security interest in the titled personal property, storage of titled personal property in the possession of the title lender and for all other services and costs of the lender associated with such transactions. A pro rata portion of the foregoing fee shall be fully earned, due and owing each day that the title loan agreement remains unpaid after maturity. Such interest and fees shall be deemed to be earned, due and owing as of the date of the title loan agreement and on the date of any subsequent renewal thereof.

2.**]** A title lender **[**may assess and collect a repossession charge if the borrower fails to deliver the titled personal property pursuant to the terms of the title loan agreement. This charge shall equal the actual expense incurred by the title lender to repossess the titled personal property, including attorney's fees, but shall be no greater than five hundred dollars for any single article of titled personal property**] shall contract for and receive simple interest and fees in accordance with sections 408.100 and 408.140, RSMo**.

367.518. TITLE LOAN AGREEMENTS, CONTENTS, FORM. — 1. Each title loan agreement shall disclose the following:

(1) All disclosures required **[**to be made under**] by** the federal Truth in Lending Act **and regulation Z**;

(2) That the transaction is a loan secured by the pledge of titled personal property **and, in at least 10-point bold type, that nonpayment of the loan may result in loss of the borrower's vehicle or other titled personal property**;

(3) The **[**identity of the parties to the agreement, including the**]** name, business address, telephone number and certificate number of the title lender, and the name**[**, resident**] and residential** address **[**and identification**]** of the borrower;

(4) The monthly interest rate to be charged;

(5) **[**The allowable fees and expenses to be charged to the borrower upon redemption of the certificate of title;

(6) The date on which the borrower's exclusive right to redeem the pledged certificate of title pursuant to section 367.521 expires**] A statement which shall be in at least 10-point bold type, separately acknowledged by the signature of the borrower and reading as follows: You may cancel this loan without any costs by returning the full principal amount to the lender by the close of the lender's next full business day**;

[(7)**] (6)** The location where the titled personal property **[**is to**] may** be delivered if the **[**certificate of title**] loan** is not **[**redeemed**] paid** and the hours such location is open for receiving such deliveries; and

[(8)**] (7)** Any additional disclosures deemed necessary by the **[**division of finance**] director** or required pursuant to sections 400.9-101 to 400.9-508, RSMo.

2. The division of finance is directed to **[**promulgate**] draft** a form **[**of disclosure**]** to be used in title loan **[**agreements**] transactions**. Use of **[**the**] this** form **[**promulgated by the division of

finance**]** is not mandatory**[**,**];** however, use of such form, properly completed, shall satisfy the disclosure provisions of this section.

367.521. REDEMPTION OF CERTIFICATE OF TITLE — EXPIRATION OR DEFAULT, LENDER MAY PROCEED AGAINST COLLATERAL. — 1. **[**Except as otherwise provided in sections 367.500 to 367.530,**]** The borrower shall be entitled to redeem the **[**certificate of title upon**]** **security by** timely satisfaction of **[**all outstanding obligations agreed to in**]** the **terms of the** title loan agreement. Upon expiration or default of a title loan agreement **[**and of the renewal or renewals of the agreement, if any, the title lender shall retain possession of the certificate of title for at least twenty days. If the borrower fails to redeem the certificate of title before the lapse of the twenty-day holding period, the pledgor shall thereby forfeit all right, title and interest in and to the titled personal property to the title lender, who shall thereby acquire an absolute right of title to the titled personal property, and the title lender shall have the sole right and authority to sell or dispose of the pledged property pursuant to sections 400.9-101 to 400.9-508, RSMo.

2. The title lender has, upon default by the pledgor of any obligation pursuant to the title loan agreement, the right to take possession of the titled personal property.

3. In taking possession, the title pledge lender or the lender's agent may proceed without judicial process if this can be done without breach of the peace; or, if necessary, may proceed by action to obtain judicial process. Any repossession conducted without the knowledge and cooperation of the owner shall comply with the requirements of subsection 12 of section 304.155, RSMo.

4. If the title lender takes possession of the titled personal property, either personally or through its agent, at any time during the twenty-day holding period provided herein, the title lender shall retain possession, either personally or through its agent, of the titled personal property until the expiration of the twenty-day holding period.

5. If during the twenty-day holding period, the borrower redeems the certificate of title by paying all outstanding principal, interest, and other fees stated in the title pledge agreement, and, if applicable, repossession fees and storage fees, the borrower shall be given possession of the certificate of title and the titled personal property, without further charge.

6. If the borrower fails to redeem the titled personal property during the twenty-day holding period, the borrower shall thereby forfeit all right, title, and interest in and to the titled personal property and certificate of title, to the title lender, who shall thereby acquire an absolute right of title and ownership to the titled personal property. The title lender shall then have the sole right and authority to sell or dispose of the unredeemed titled personal property.

7. If the borrower loses the title pledge agreement or other evidence of the transaction, the borrower shall not thereby forfeit the right to redeem the pledged property, but may promptly, before the lapse of the redemption date, make affidavit for such loss, describing the pledged property, which affidavit shall, in all respects, replace and be substituted for the lost evidence of the transaction**], the title lender may proceed against the collateral pursuant to chapter 400, RSMo, and with sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo**.

367.524. RECORDS OF LOAN AGREEMENTS. — 1. Every title lender shall keep a consecutively numbered record of each **[**and every**]** title loan agreement executed, which number shall be placed on the corresponding title loan agreement itself. Such record shall include the following:

(1) A clear and accurate description of the titled personal property, including its vehicle identification or serial number, license plate number, **[**if applicable,**]** year, make, model, type, and color;

(2) The date of the title loan agreement;

(3) The amount of the loan **[**made pursuant to the title loan agreement**]**;

(4) The date of maturity of the loan; and

(5) The name, **[**race, sex, height,**]** date of birth, Social Security number, **[**resident**]** **residential** address, and the type **[**and unique identification number**]** of **[**the**]** photo identification of the borrower.

2. The title lender shall **[**make a good and useable**]** photocopy **[**of**]** the photo identification of the borrower or shall take an instant photograph of the borrower, **[**which**]** **and shall attach such** photocopy or photograph **[**shall be attached**]** to the lender's copy of the title loan agreement **and all renewals**.

3. The borrower shall sign the title loan agreement and shall be provided with a copy of such agreement. The title lender, or the lender's employee or agent shall also sign the title loan agreement. **The title lender shall provide each customer with and retain a photocopy of the pledged title at the time the note is signed.**

4. The title lender shall keep the numbered records and copies of its title loan agreements**, including a copy of the notice required pursuant to subsection 1 of section 367.525,** for a period of no less than two years from the date of the closing of the last transaction reflected therein. **[**The date of the last transaction, as used in this subsection, means in the case where a borrower redeemed the pledged certificate of title, the date of such redemption, and in the case where a borrower does not redeem the pledged certificate of title, the date on which the title lender sells the titled personal property.**]** A title lender who ceases engaging in the business of making title loans shall keep these records for **[**a period of no less than**]** **at least** two years from the date the lender ceased engaging in the business. **A title lender must notify the director to request an examination at least ten days before ceasing business.**

5. The records required **[**to be maintained**]** by this section shall be made available for inspection by any employee of the division of finance upon request during ordinary business hours without warrant or court order.

367.525. NOTICE TO BORROWER PRIOR TO ACCEPTANCE OF TITLE LOAN APPLICATION. — 1. Before accepting a title loan application, the lender shall provide the borrower the following notice in at least 10-point bold type and receipt thereof shall be acknowledged by signature of the borrower:

(Name of Lender)

NOTICE TO BORROWER

(1.) Your automobile title will be pledged as security for the loan. If the loan is not repaid in full, including all finance charges, you may lose your automobile.

(2.) This lender offers short term loans. Please read and understand the terms of the loan agreement before signing.

I have read the above "NOTICE TO BORROWER" and I understand that if I do not repay this loan that I may lose my automobile.

_____

Borrower

_____

Date

2. If the loan is secured by titled personal property other than an automobile, the lender shall either provide a form with the proper word describing the security or else shall strike the word "automobile" from the three places it appears, write or print in the type of titled personal property serving as security and have the customer initial all three places.

3. The title lender shall post in a conspicuous location in each licensed office, in at least 14-point bold type the maximum rates that such title lender is currently charging on any loans made and the statement:

NOTICE:

Borrowing from this lender places your automobile at risk. If this loan is not repaid in full, including all finance charges, you may lose your automobile.

This lender offers short term loans. Please read and understand the terms of the loan agreement before signing.

4. When making or negotiating loans, the title lender shall take into consideration in determining the size and duration of a loan contract the financial ability of the borrower to reasonably repay the loan in the time and manner specified in the loan contract.

367.527. LIMITATIONS OF TITLE LENDERS. — 1. A title lender shall not:

(1) Accept a pledge from a person under eighteen years of age**[**,**]** or from anyone who appears to be intoxicated;

(2) **[**Make any agreement giving the title lender any recourse against the borrower other than the title lender's right to take possession of the titled personal property and certificate of title upon the borrower's default or failure to redeem, sell or otherwise dispose of the titled personal property in accordance with provisions of this act, except as otherwise expressly permitted in sections 367.500 to 367.530;

(3) Enter into a title agreement in which the amount of money loaned in consideration of the pledge of any single certificate of title**] make a loan which** exceeds five thousand dollars;

[(4)**] (3)** Accept any waiver**[**, in writing or otherwise,**]** of any right or protection **[**accorded**] of** a borrower **[**pursuant to sections 367.500 to 367.530**]**;

[(5)**] (4)** Fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;

[(6)**] (5)** Purchase titled personal property in the operation of its business;

[(7)**] (6)** Enter into a title loan agreement unless the borrower presents clear title **[**to titled personal property**]** at the time that the loan is made **[**and such title is retained in the physical possession of the title pledge lender; or**];**

[(8)**] (7)** Knowingly violate any provision of sections 367.500 to **[**367.530**] 367.533** or any rule promulgated **[**pursuant to authority granted by this act**] thereunder;**

(8) Violate any provision of sections 408.551 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo; or

(9) Store repossessed titled personal property at a location more than fifteen miles from the office where the title loan agreement was executed.

2. If a title lender enters into a transaction contrary to this section, **[**any lien obtained by the title lender**] the loan and the lien** shall be void.

367.530. SAFEKEEPING OF CERTIFICATES OF TITLE — LIABILITY INSURANCE MAINTAINED, WHEN — LIABILITY OF TITLE LENDER. — 1. Every **[**person engaged in the business of title lending**] title lender** shall **[**provide**] maintain** a **[**safe**] fireproof** place for the **[**keeping of the**]** pledged certificates of title and **a safe place** for **[**the keeping of**]** pledged property delivered to **or repossessed by** the title lender **[**pursuant to the terms of any title loan agreement**]**.

2. Every **[**person engaged in the business of title lending**] title lender** shall maintain premises liability insurance in an amount of not less than one million dollars per occurrence for the benefit of customers and employees **[**who visit or work at the title lending office**]**, which insurance shall provide coverage for, among other risks, injuries caused by the criminal acts of third parties.

3. A **[**person engaged in the business of title lending**] title lender** shall **not** be **[**immune from liability**] liable** for any loss or injury occasioned or caused by the use of pledged property unless the pledged property is actually in the **title lender's** possession **[**of the title pledge lender**]**.

4. A **[**person engaged in the business of title lending**] title lender** shall be strictly liable to the borrower for any loss to pledged property in the **title lender's** possession **[**of the title lender, but only if the borrower makes a redemption of the pledged property prior to the expiration of the twenty-day holding period provided in section 367.521**]**.

367.531. APPLICABILITY TO CERTAIN TRANSACTIONS. — The provisions of sections 408.552 to 408.557, RSMo, and sections 408.560 to 408.562, RSMo, are applicable to all transactions pursuant to sections 367.500 to 367.533.

367.532. VIOLATIONS, PENALTIES. — 1. Any title lender which fails, refuses or neglects to comply with sections 367.500 to 367.533, sections 408.551 to 408.557, RSMo, sections 408.560 to 408.562, RSMo, or any laws relating to title loans or commits any criminal act may have its license suspended or revoked by order of the director after a hearing before said director on an order of the director to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the title lender at least ten days prior to the hearing.

2. Whenever it shall appear to the director that any title lender is failing, refusing or neglecting to make a good faith effort to comply with the provisions of sections 367.500 to 367.533, or any laws relating to consumer loans, the director may issue an order to cease and desist which order may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall be assessed and collected by the director. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

379.316. SCOPE OF ACT (SECTION 379.017 AND SECTIONS 379.316 TO 379.361). — 1. Section 379.017 and sections 379.316 to 379.361 apply to insurance companies incorporated pursuant to sections 379.035 to 379.355, section 379.080, sections 379.060 to 379.075, sections 379.085 to 379.095, sections 379.205 to 379.310, and to insurance companies of a similar type incorporated pursuant to the laws of any other state of the United States, and alien insurers licensed to do business in this state, which transact fire and allied lines, marine and inland marine insurance, to any and all combinations of the foregoing or parts thereof, and to the combination of fire insurance with other types of insurance within one policy form at a single premium, on risks or operations in this state, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in section 379.331;

(2) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured pursuant to marine, as distinguished from inland marine, insurance policies;

(3) Insurance against loss or damage to aircraft;

(4) All forms of motor vehicle insurance; and

(5) All forms of life, accident and health, and workers' compensation insurance.

2. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the director, or as established by general custom of the business, as inland marine insurance.

3. Commercial property and commercial casualty insurance policies **[**which meet the exemption requirements of section 379.362 shall be exempt from those insurance laws of this state which concern the regulation by the director of the department of insurance of the policy language, policy provisions or the format of such policies, or the regulation of the rates used to calculate the amount of premium charged**] are subject to rate and form filing requirements as provided in section 379.321**.

379.321. RATING PLANS TO BE FILED WITH DIRECTOR, WHEN — INFORMATIONAL FILINGS. — 1. Every insurer shall file with the director, except as to commercial property or commercial casualty insurance as provided in subsection 6 of this section **[**and as to inland marine risks which by regulation or general custom of the business are not written according to manual rates or rating plans**]**, every manual of classifications, rules, underwriting rules and rates,

every rating plan and every modification of the foregoing which it uses and the policies and forms to which such rates are applied. Any insurer may satisfy its obligation to make any such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the director to accept such filings on its behalf, provided that nothing contained in section 379.017 and sections 379.316 to 379.361 shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization or as requiring any member or subscriber to authorize the director to accept such filings on its behalf. Filing with the director by such insurer or licensed rating organization within ten days after such manuals, rating plans or modifications thereof or policies or forms are effective shall be sufficient compliance with this section.

2. Except as to commercial property or commercial casualty insurance as provided in subsection 6 of this section and **[**as to contracts or policies for**]** inland marine risks **[**as to which filings are not required**] as provided in subsection 1 of this section**, no insurer shall make or issue a policy or contract except pursuant to filings which are in effect for that insurer or pursuant to section 379.017 and sections 379.316 to 379.361. Any rates, rating plans, rules, classifications or systems, in effect on August 13, 1972, shall be continued in effect until withdrawn by the insurer or rating organization which filed them.

3. Upon the written application of the insured, stating his or her reasons therefor, filed with the insurer, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

4. Every insurer which is a member of or a subscriber to a rating organization shall be deemed to have authorized the director to accept on its behalf all filings made by the rating organization which are within the scope of its membership or subscribership, provided:

(1) That any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the director and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn or terminated such authorization, or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber; and

(2) That any member may proceed in the same manner as a subscriber unless the rating organization shall have adopted a rule, with the approval of the director:

(a) Requiring a member, before making an independent filing, first to request the rating organization to make such filing on its behalf and requiring the rating organization, within thirty days after receipt of such request, either:

a. To make such filing as a rating organization filing;

b. To make such filing on an agency basis solely on behalf of the requesting member; or

c. To decline the request of such member; and

(b) Excluding from membership any insurer which elects to make any filing wholly independently of the rating organization.

5. Any change in a filing made pursuant to this section during the first six months of the date such filing becomes effective shall be approved or disapproved by the director within ten days following the director's receipt of notice of such proposed change.

6. **[**Commercial property and commercial casualty insurance policies which meet the exemption requirements of section 379.362 shall adhere to the filing requirements of this section, provided however, that the filings for such policies shall be for informational purposes only. Therefore, all manuals of classifications, rules, underwriting rules, rates, rate plans and modifications, policy forms and other forms to which such rates are applied, shall be filed with the director for policies which meet the exemption requirements of section 379.362. Such filings shall be made with the director within thirty days after such materials are used by the insurer, but such policies and rates need not be reviewed or approved by the department of insurance as a condition of their use. Nothing in this subsection shall require the filing of individual policies or the rates related thereto where the original policy forms, manuals, rates and rules for the

insurance plan or program to which such individual policies conform have already been filed with the director.**] Commercial property and commercial casualty requirements differ as follows:**

(1) All commercial property and commercial casualty insurance rates, rate plans, modifications, and manuals of classifications, where appropriate, shall be filed with the director for informational purposes only. Such rates are not to be reviewed or approved by the department of insurance as a condition of their use. Nothing in this subsection shall require the filing of individual rates where the original manuals, rates and rules for the insurance plan or program to which such individual policies conform have already been filed with the director;

(2) If an insurer will only renew a commercial casualty or commercial property insurance policy with an increase in premium of twenty-five percent or more, a "premium alteration requiring notification" notice must be mailed or delivered by the insurer at least sixty days prior to the expiration date of the policy, except in the case of an umbrella or excess policy the coverage of which is contingent on the coverage of an underlying policy of commercial property or casualty insurance, in which case notice of an increase in premium of twenty-five percent or more shall be mailed or delivered at least thirty days prior to the expiration date of the policy. Such notice shall be mailed or delivered to the agent of record and to the named insured at the address shown in the policy. If the insurer fails to meet this notice requirement, the insured shall have the option of continuing the policy for the remainder of the notice period plus an additional thirty days at the premium rate of the existing policy or contract. This provision does not apply if the insurer has offered to renew a policy without such an increase in premium or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal. For purposes of this section, "premium alteration requiring notification" means an annual increase in premium of twenty-five percent or more, exclusive of premium increases due to a change in the operations of the insured which increases either the hazard insured against or the individual loss characteristics, or due to a change in the magnitude of the exposure basis, including, without limitation, increases in payroll or sales. For commercial multiperil policies, no "premium alteration requiring notification" shall be required unless the increase in premium for all of a policyholder's policies taken together amounts to a twenty-five percent or more annual increase in premium;

(3) Commercial property and commercial casualty policy forms shall be filed with the director as provided pursuant to subsection 1 of this section. However, if after review, it is determined that corrective action must be taken to modify the filed forms, the director shall impose such corrective action on a prospective basis for new policies. All policies previously issued which are of a type that is subject to such corrective action shall be deemed to have been modified to conform to such corrective action retroactive to their inception date;

(4) For purposes of this section, "commercial casualty" means "commercial casualty insurance" as defined in section 379.882. For purposes of this section, "commercial property" means property insurance, which is for business and professional interests, whether for profit, nonprofit or public in nature which is not for personal, family or household purposes, but does not include title insurance;

(5) Nothing in this subsection shall limit the director's authority over excessive, inadequate or unfairly discriminatory rates.

379.356. EXCESSIVE PREMIUMS AND REBATES PROHIBITED. — 1. No insurer, broker or agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the provisions of section 379.017 and sections 379.316 to 379.361. No insurer or employee thereof, and no broker or agent shall pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate,

discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in applicable filings. No insured named in any policy of insurance shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of, nor permitting the regulation of the payment of, commissions or other compensation to duly licensed agents and brokers; nor as prohibiting, or permitting the regulation of, any insurer from allowing or returning to its participating policyholders or members, dividends or savings.

2. An insurer or insurance producer, agent or broker may charge additional incidental fees for premium installments, late payments, policy reinstatements, or other similar services specifically provided for by law or regulation. Such fees shall be disclosed to the applicant or insured in writing.

379.425. LAW APPLICABLE TO CERTAIN CLASSES OF INSURANCE — EXCEPTIONS. — 1. Sections 379.420 to 379.510 apply to casualty insurance, including fidelity, surety and guaranty bonds, and to all forms of motor vehicle insurance, on risks or operations in this state, except**:**

(1) Reinsurance, other than joint reinsurance to the extent stated in section 379.460 and subsection 2 of section 379.430;

(2) Insurance against workers' compensation liability;

(3) Accident and health insurance;

(4) Insurance against loss of or damage to aircraft, or against liability, other than employers' liability, arising out of the ownership, maintenance or use of aircraft.

2. Commercial casualty insurance policies **[**which meet the exemption requirements of section 379.362**]** shall be exempt from **[**those insurance laws of this state which concern the regulation by the director of insurance of the policy language, policy provisions or the format of such policies, or regulation of the rates used to calculate the amount of premium charged**] the provisions of sections 379.420 to 379.510 to the extent permitted pursuant to subsection 6 of section 379.321**.

379.888. DEFINITIONS FOR SECTIONS 379.888 TO 379.893 — NOTICE TO INSURED, WHEN — DEPARTMENT TO NOTIFY INSURERS. — 1. As used in sections 379.888 to 379.893, the following terms mean:

(1) '"A' rated risk", any insurance coverage for which rates are individually determined based upon judgment because neither a rate service organization nor the insurer has yet established a manual rate based upon experience, except that if a rate service organization or the insurer acquires sufficient experience to establish, or if the insurer itself has, a manual rate for such coverage, then such coverage shall no longer be considered an "A" rated risk for each insurer;

(2) "Base rate", the rate designed to reflect the average aggregate experience of a particular market, prior to adjustment for individual risk characteristics resulting from application of any rating plan;

(3) "Classification", a grouping of insurance risks according to a classification system used by an insurer;

(4) "Classification system", a schedule of classifications and a rule or set of rules used by an insurer for determining the classification applicable to an insured;

(5) "Commercial casualty insurance", casualty insurance for business or nonprofit interests which is not for personal, family, or household purposes;

(6) "Director", the director of the department of insurance;

(7) "Rate", a monetary amount applied to the units of exposure basis assigned to a classification and used by an insurer to determine the premium for an insured;

(8) "Rating plan", a rule or set of rules used by an insurer to calculate premium for an insured, and the parameter values used in such calculation, after application of classification premium rates to units of exposure; and

(9) "Rating system", a collection of rating plans to be used by an insurer, rules for determining which rating plans are applicable to an insured, a classification system, and other rules used by an insurer for determining contractual consideration for insured.

2. **[**Every filing of commercial casualty insurance premium rates, rating plans or rating systems by an insurer or rating organization shall be submitted to the director for review prior to becoming effective if it produces an increase or decrease exceeding twenty-five percent annually from changes in any:

(1) Base rates;

(2) Rating basis;

(3) Rating plans;

(4) Manual rules;

(5) Territorial definitions; or

(6) Combination of such rating system components of subdivisions (1) to (5) of this subsection.

3.**]** Nothing in this section applies to premium increases or decreases from:

(1) Change in hazard of the insured's operation;

(2) Change in magnitude of the exposure basis for the insured, including, without limitation, changes in payroll or sales;

(3) "A" rated risks**[**; or

(4) Commercial casualty insurance that is exempt pursuant to section 379.362**]**.

[4.**]** **3.** Any renewal notice of a commercial casualty insurance policy as defined in section 379.882 for any Missouri risk or portion thereof which would have the effect of increasing the premium charged to the insured due to a change in any scheduled rating factor applied to the policy during the previous policy period shall contain or be accompanied by a notice to the insured informing the insured that any inquiry by the insured concerning the change may be directed to the agent of record or directly to the insurer. When any insured makes a request for information pursuant to this subsection, the insurer, directly or through the insurer's agent, shall inform the insured in writing in terms sufficiently clear and specific of the basis for any reduction in a scheduled rating credit or increase in a scheduled rating debit which is applied to the policy. Evidence supporting the basis for any scheduled rating credit or debit shall be retained by the insurer for the policy term plus two calendar years pursuant to section 374.205, RSMo. The department of insurance shall notify commercial casualty insurers of the requirements of this section by bulletin.

4. Any renewal involving a "premium alteration requiring notification" as defined in subsection 6 of section 379.321, shall be handled pursuant to the requirements of that subsection.

408.052. POINTS PROHIBITED, EXCEPTION — PENALTIES FOR ILLEGAL POINTS — VIOLATION A MISDEMEANOR — DEFAULT CHARGE AUTHORIZED, WHEN, EXCEPTIONS. — 1. No lender shall charge, require or receive, on any residential real estate loan, any points or other fees of any nature whatsoever, excepting insurance, including insurance for involuntary unemployment coverage, and a one-percent origination fee, whether from the buyer or the seller or any other person, except that the lender may charge bona fide expenses paid by the lender to any other person or entity except to an officer, employee, or director of the lender or to any business in which any officer, employee or director of the lender owns any substantial interest for services actually performed in connection with a loan. In addition to the foregoing, if the loan is for the construction, repair, or improvement of residential real estate, the lender may charge a fee not to exceed one percent of the loan amount for inspection and disbursement of the proceeds of the loan to third parties. Notwithstanding the foregoing, the parties may contract for

a default charge for any installment not paid in full within fifteen days of its scheduled due date. The restrictions of this section shall not apply:

(1) To any loan which is insured or covered by guarantee made by any department, board, bureau, commission, agency or establishment of the United States, pursuant to the authority of any act of Congress heretofore or hereafter adopted; and

(2) To any loan for which an offer or commitment or agreement to purchase has been received from and which is made with the intention of reselling such loan to the Federal Housing Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or to any successor to the above-mentioned organizations, to any other state or federal governmental or quasi-governmental organization; and

(3) Provided that the 1994 reenactment of this section shall not be construed to be action taken in accordance with Public Law 96-221, Section 501(b)(4). Any points or fees received in excess of those permitted under this section shall be returned to the person from whom received upon demand.

2. Notwithstanding the language in subsection 1 of this section, a lender may pay to an officer, employee or director of the lender, or to any business in which such person has an interest, bona fide fees for services actually and necessarily performed in good faith in connection with a residential real estate loan, provided:

(1) Such services are individually listed by amount and payee on the loan-closing documents; and

(2) Such lender may use the preemption of Public Law 96-221, Section 501 with respect to the residential real estate loan in question. When fees charged need not be disclosed in the annual percentage rate required by Title 15, U.S.C. Sections 1601, et seq., and regulations thereunder because such fees are **[**deminimus**]** **de minimis** amounts or for other reasons, such fees need not be included in the annual percentage rate for state examination purposes.

3. **The lender may charge and collect bona fide fees for services actually and necessarily performed in good faith in connection with a residential real estate loan as provided in subsection 2 of this section; however, the lender's board of directors shall determine whether such bona fide fees shall be paid to the lender or businesses related to the lender in subsection 2 of this section, but may allow current contractual relationships to continue for up to two years.**

4. If any points or fees are charged, required or received, which are in excess of those permitted by this section, or which are not returned upon demand when required by this section, then the person paying the same points or fees or his or her legal representative may recover twice the amount paid together with costs of the suit and reasonable attorney's fees, provided that the action is brought within five years of such payment.

[4.**]** **5.** Any lender who knowingly violates the provisions of this section is guilty of a class B misdemeanor.

408.140. ADDITIONAL CHARGES OR FEES PROHIBITED, EXCEPTIONS — NO FINANCE CHARGES IF PURCHASES ARE PAID FOR WITHIN CERTAIN TIME LIMIT, EXCEPTION. — 1. No further or other charge or amount whatsoever shall be directly or indirectly charged, contracted for or received for interest, service charges or other fees as an incident to any such extension of credit except as provided and regulated by sections 367.100 to 367.200, RSMo, and except:

(1) On loans for thirty days or longer which are other than "open-end credit" as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, a fee, not to exceed five percent of the principal amount loaned not to exceed fifty dollars may be charged by the lender; however, no such fee shall be permitted on any extension, refinance, restructure or renewal of any such loan, unless any investigation is made on the application to extend, refinance, restructure or renew the loan;

(2) The lawful fees actually and necessarily paid out by the lender to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter; however, premiums for insurance in lieu of perfecting a security interest required by the lender may be charged if the premium does not exceed the fees which would otherwise be payable;

(3) If the contract so provides, a charge for late payment on each installment or minimum payment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or the minimum payment due or twenty-five dollars, whichever is less; except that, a minimum charge of ten dollars may be made. If the contract so provides, a charge for late payment on each twenty-five dollars or less installment in default for a period of not less than fifteen days shall not exceed five dollars;

(4) **If the contract so provides, a charge for late payment for a single payment note in default for a period of not less than fifteen days in an amount not to exceed five percent of the payment due; provided that, the late charge for a single payment note shall not exceed fifty dollars;**

(5) Charges or premiums for insurance written in connection with any loan against loss of or damage to property or against liability arising out of ownership or use of property as provided in section 367.170, RSMo; however, notwithstanding any other provision of law, with the consent of the borrower, such insurance may cover property all or part of which is pledged as security for the loan, and charges or premiums for insurance providing life, health, accident, or involuntary unemployment coverage;

[(5)**] (6)** Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than fifteen dollars;

[(6)**] (7)** If the contract or promissory note, signed by the borrower, provides for attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the amount due and payable under such contract or promissory note, together with any court costs assessed. The attorney fees shall only be applicable where the contract or promissory note is referred for collection to an attorney, and is not handled by a salaried employee of the holder of the contract;

[(7)**] (8)** Provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the debtor to defer up to three monthly loan payments, so long as the fee is no more than the lesser of fifty dollars or ten percent of the loan payments deferred, no extensions are made until the first loan payment is collected and no more than one deferral in a twelve-month period is agreed to and collected on any one loan. This section applies to nonprecomputed loans only and does not affect any other sections.

2. Other provisions of law to the contrary notwithstanding, an open-end credit contract under which a credit card is issued by a company, financial institution, savings and loan or other credit issuing company whose credit card operations are located in Missouri may charge an annual fee, provided that no finance charge shall be assessed on new purchases other than cash advances if such purchases are paid for within twenty-five days of the date of the periodic statement therefor.

3. Notwithstanding any other provision of law to the contrary, in addition to charges allowed pursuant to section 408.100, an open-end credit contract provided by a company, financial institution, savings and loan or other credit issuing company which is regulated pursuant to this chapter may charge an annual fee not to exceed fifty dollars.

408.500. UNSECURED LOANS UNDER FIVE HUNDRED DOLLARS, LICENSURE OF LENDERS, INTEREST RATES AND FEES ALLOWED — PENALTIES FOR VIOLATIONS — COST OF COLLECTION EXPENSES — NOTICE REQUIRED, FORM. — 1. Lenders **[**exclusively**], other than banks, trust companies, credit unions, savings banks and savings and loan companies,** in the business of making unsecured loans **[**under**] of** five hundred dollars **[**and who are not otherwise registered under this chapter shall be registered with**] or less shall obtain a license**

from the director of the division of finance **[**upon the payment of**].** An annual **[**registration**] license** fee of three hundred dollars **per location shall be required**. The license year shall commence on January first each year and the license fee may be prorated for expired months. **[**Such lenders shall not charge, contract for or receive on such loans interest or any fee of any type or kind whatsoever which exceed the approved rate as provided in this subsection. Lenders shall file a rate schedule with the director who, upon review, shall approve rates comparable with those lawfully charged in the marketplace for similar loans. In determining marketplace interest rates, the director shall consider the appropriateness of rate requests made by lenders and rates allowed on similar loans in the states contiguous to Missouri. If the director takes no action upon a filed rate schedule within thirty days of receipt, then it shall be deemed approved as filed. The director, on January first and July first of each year, shall consider the filing of new interest rate schedules to reflect changes in the marketplace. The director may promulgate rules regarding the computation and payment of interest, contract statements, payment receipts and advertising for loans made under the provisions of this section.**]** The provisions of this section shall not apply to pawnbroker loans **[**and small**], consumer credit** loans as authorized under chapter 367, RSMo**, nor to a check accepted and deposited or cashed by the payee business on the same or the following business day. The disclosures required by the federal Truth in Lending Act and regulation Z shall be provided on any loan, renewal or extension made pursuant to this section and the loan, renewal or extension documents shall be signed by the borrower**.

2. **Entities making loans pursuant to this section shall contract for and receive simple interest and fees in accordance with sections 408.100 and 408.140.** Any contract evidencing any fee or charge of any kind whatsoever, except for bona fide clerical errors, in **[**excess of the rate established under**] violation of** this section shall be void. Any person, firm or corporation who receives or imposes a fee or charge in **[**excess of the rate established under**] violation of** this section shall be guilty of a class A misdemeanor.

3. Notwithstanding any other law to the contrary, cost of collection expenses, which include court costs and reasonable attorneys fees, awarded by the court in suit to recover on a bad check or breach of contract shall not be considered as a fee or charge for purposes **[**pursuant to**] of** this section.

4. Lenders licensed pursuant to this section shall conspicuously post in the lobby of the office, in at least 14-point bold type, the maximum annual percentage rates such licensee is currently charging and the statement:

NOTICE:

This lender offers short term loans. Please read and understand the terms of the loan agreement before signing.

5. The lender shall provide the borrower with a notice in substantially the following form set forth in at least 10-point bold type, and receipt thereof shall be acknowledged by signature of the borrower:

(1) This lender offers short term loans. Please read and understand the terms of the loan agreement before signing.

(2) You may cancel this loan without costs by returning the full principal balance to the lender by the close of the lender's next full business day.

6. The lender shall renew the loan upon the borrower's written request and the payment of any interest and fees due at the time of such renewal; however, upon the fifth renewal of the loan agreement, and each subsequent renewal thereafter, the borrower shall reduce the principal amount of the loan by ten percent of the original amount of the loan until such loan is paid in full.

7. When making or negotiating loans, a licensee shall consider the financial ability of the borrower to reasonably repay the loan in the time and manner specified in the loan contract. All records shall be retained at least two years.

8. A licensee who ceases business pursuant to this section must notify the director to request an examination of all records within ten business days prior to cessation. All records must be retained at least two years.

9. Any lender licensed pursuant to this section who fails, refuses or neglects to comply with the provisions of this section, or any laws relating to consumer loans or commits any criminal act may have its license suspended or revoked by the director of finance after a hearing before the director on an order of the director to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the licensee at least ten days prior to the hearing.

10. Whenever it shall appear to the director that any lender licensed pursuant to this section is failing, refusing or neglecting to make a good faith effort to comply with the provisions of this section, or any laws relating to consumer loans, the director may issue an order to cease and desist which order may be enforceable by a civil penalty of not more than one thousand dollars per day for each day that the neglect, failure or refusal shall continue. The penalty shall be assessed and collected by the director. In determining the amount of the penalty, the director shall take into account the appropriateness of the penalty with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

408.510. LICENSURE OF CONSUMER INSTALLMENT LENDERS — INTEREST AND FEES ALLOWED. — Notwithstanding any other law to the contrary, the phrase "consumer installment loans" means secured or unsecured loans of any amount and payable in not less than four substantially equal installments over a period of not less than one hundred twenty days. The phrase "consumer installment lender" means a person licensed to make consumer installment loans. A consumer installment lender shall be licensed in the same manner and upon the same terms as a lender making consumer credit loans. Such consumer installment lenders shall contract for and receive interest and fees in accordance with sections 408.100 and 408.140. Consumer installment lenders shall be subject to the provisions of sections 408.551 to 408.562.

427.220. COMMISSIONS AND CONSIDERATION PAID TO DEPOSITARY INSTITUTIONS NOT TO BE MORE LIMITED THAN THOSE PAID TO INSURANCE AGENCIES — DEFINITIONS. — 1. Commissions paid to properly licensed employees or individual agents of a depository institution or a related entity shall not be more limited than commissions paid to employees or agents or any other properly licensed insurance agency, but shall be disclosed at least quarterly to the board of directors of the depository institution if earned under a contract with the depository institution to facilitate the sale of insurance; provided this subsection shall not apply to commissions based on the sale of credit insurance regulated by chapter 385, RSMo.

2. Consideration given under a contract between a depository institution and a related entity to facilitate the sale of insurance shall not be more limited than under such a contract between a depository institution and a nonrelated entity, except that the consideration from the related entity, other than an operating subsidiary, must be at least equal to the fair market value of the consideration from the depository institution. The depository institution may establish the value of rights under a contract by obtaining written bid commitments based on a nonrelated entity's bid for a contract; provided:

(1) The parties to the contract may, demonstrate fair market value by illustrating the costs and benefits of the contract in a number of ways, including but not limited to the following: providing a full accounting of the calculations and compensation, including gross commissions to be received by each party to the contract, and any fees or other payments made to any bank officers, directors, employees and agents as a result of the contract, as well as specifically disclosing the services, such as standard light, heat,

telephone, space plus office personnel and filing space, and providing an accounting of new business to be generated, with a comparison of depository institution and agency business, for the parties to the contract;

(2) Information provided pursuant to this subsection, shall be considered proprietary and confidential pursuant to sections 361.070 and 361.080, RSMo.

3. If the division determines enforcement action is necessary to protect the safety and soundness of an institution that it regulates, it may take enforcement action as otherwise permitted by law and may limit insurance commissions or other payments to an amount other than permitted in this section; provided the division has made a finding that enforcement action was required to protect the safety and soundness of such institution. Nothing in this section shall limit the application of sections 382.190 and 382.195, RSMo, to transactions between insurers and their affiliates.

4. For the purposes of this section, the following terms shall mean:

(1) "Commissions", in addition to insurance commissions, this term shall include any other compensation received for the sale of insurance products whether such compensation is classified within the depository institution as salary, bonus or other remuneration;

(2) "Contract", any contract or arrangement;

(3) "Division", the division of finance or the division of credit union supervision;

(4) "Fair market value", the value of an asset or service, which may include determinable costs and a profit reasonable for the market and shall not be limited to a specific rate of profit;

(5) "Operating subsidiary", any subsidiary of a depository institution that is not a financial subsidiary as otherwise defined by law;

(6) "Related entity", any holding company, affiliate or subsidiary of the depository institution or any entity controlled by common ownership with the depository institution or by an individual or individuals who are executive officers or directors of the depository institution.

513.430. PROPERTY EXEMPT FROM ATTACHMENT — BENEFITS FROM CERTAIN EMPLOYEE PLANS, EXCEPTION — BANKRUPTCY PROCEEDING, FRAUDULENT TRANSFERS, EXCEPTION — CONSTRUCTION OF SECTION. — 1. The following property shall be exempt from attachment and execution to the extent of any person's interest therein:

(1) Household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for personal, family or household use of such person or a dependent of such person, not to exceed one thousand dollars in value in the aggregate;

(2) Jewelry held primarily for the personal, family or household use of such person or a dependent of such person, not to exceed five hundred dollars in value in the aggregate;

(3) Any other property of any kind, not to exceed in value four hundred dollars in the aggregate;

(4) Any implements, professional books or tools of the trade of such person or the trade of a dependent of such person not to exceed two thousand dollars in value in the aggregate;

(5) Any motor vehicle, not to exceed one thousand dollars in value;

(6) Any mobile home used as the principal residence, not to exceed one thousand dollars in value;

(7) Any one or more unmatured life insurance contracts owned by such person, other than a credit life insurance contract;

(8) The amount of any accrued dividend or interest under, or loan value of, any one or more unmatured life insurance contracts owned by such person under which the insured is such person or an individual of whom such person is a dependent; provided, however, that if proceedings under Title 11 of the United States Code are commenced by or against such person,

the amount exempt in such proceedings shall not exceed in value **[**five**]** **one hundred fifty** thousand dollars in the aggregate less any amount of property of such person transferred by the life insurance company or fraternal benefit society to itself in good faith if such transfer is to pay a premium or to carry out a nonforfeiture insurance option and is required to be so transferred automatically under a life insurance contract with such company or society that was entered into before commencement of such proceedings. No amount of any accrued dividend or interest under, or loan value of, any such life insurance contracts shall be exempt from any claim for child support. Notwithstanding anything to the contrary, no such amount shall be exempt in such proceedings under any such insurance contract which was purchased by such person within **[**six months**]** **one year** prior to the commencement of such proceedings;

(9) Professionally prescribed health aids for such person or a dependent of such person;

(10) Such person's right to receive:

(a) A Social Security benefit, unemployment compensation or a local public assistance benefit;

(b) A veteran's benefit;

(c) A disability, illness or unemployment benefit;

(d) Alimony, support or separate maintenance, not to exceed five hundred dollars a month;

(e) Any payment under a stock bonus plan, pension plan, disability or death benefit plan, profit-sharing plan, nonpublic retirement plan or any similar plan described, defined, or established pursuant to section 456.072, RSMo, the person's right to a participant account in any deferred compensation program offered by the state of Missouri or any of its political subdivisions, or annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of such person and any dependent of such person unless:

a. Such plan or contract was established by or under the auspices of an insider that employed such person at the time such person's rights under such plan or contract arose;

b. Such payment is on account of age or length of service; and

c. Such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, (26 U.S.C. 401(a), 403(a), 403(b), 408, 408A or 409);

except that any such payment to any person shall be subject to attachment or execution pursuant to a qualified domestic relations order, as defined by Section 414(p) of the Internal Revenue Code of 1986, as amended, issued by a court in any proceeding for dissolution of marriage or legal separation or a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of marital property at the time of the original judgment of dissolution;

(f) Any money or assets, payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified under Section 401(k), 403(a)(3), 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, except as provided in this paragraph. Any plan or arrangement described in this paragraph shall not be exempt from the claim of an alternate payee under a qualified domestic relations order; however, the interest of any and all alternate payees under a qualified domestic relations order shall be exempt from any and all claims of any creditor, other than the state of Missouri through its division of family services. As used in this paragraph, the terms "alternate payee" and "qualified domestic relations order" have the meaning given to them in Section 414(p) of the Internal Revenue Code of 1986, as amended.

If proceedings under Title 11 of the United States Code are commenced by or against such person, no amount of funds shall be exempt in such proceedings under any such plan, contract, or trust which is fraudulent as defined in section 456.630, RSMo, and for the period such person participated within three years prior to the commencement of such proceedings. For the purposes of this section, when the fraudulently conveyed funds are recovered and after, such

funds shall be deducted and then treated as though the funds had never been contributed to the plan, contract, or trust;

(11) The debtor's right to receive, or property that is traceable to, a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

2. Nothing in this section shall be interpreted to exempt from attachment or execution for a valid judicial or administrative order for the payment of child support or maintenance any money or assets, payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified pursuant to Section 408A of the Internal Revenue Code of 1986, as amended.

SECTION 1. DENIAL OF CLAIM, DISCLOSURE BY APPLICANT NOT REQUIRED. — No insurer or its agent or representative shall require any applicant or policyholder to divulge if any insurer has denied any claim of that applicant or policyholder.

Approved July 12, 2001

SB 193 [HCS SS SB 193]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Governs the qualifications and procedures for the licensing of insurance producers.

AN ACT to repeal sections 148.400, 375.012, 375.014, 375.016, 375.017, 375.018, 375.019, 375.020, 375.021, 375.022, 375.025, 375.027, 375.031, 375.033, 375.035, 375.037, 375.039, 375.046, 375.051, 375.061, 375.065, 375.071, 375.076, 375.081, 375.082, 375.086, 375.091, 375.096, 375.101, 375.106, 375.116, 375.121, 375.136, 375.141, 375.142, 375.158, 379.356 and 384.043, RSMo 2000, and to enact in lieu thereof thirty new sections relating to insurance producers, with penalty provisions and an effective date for certain sections.

SECTION

A. Enacting clause.
148.400. Deductions allowed insurance companies.
374.285. Expungement of certain disciplinary action records.
375.012. Definitions.
375.014. Insurance producers, license required — insurance producer license not required, when.
375.015. Application for licensure, insurance producers.
375.016. Examination required for insurance producer's license.
375.017. Nonresident producer's license.
375.018. Issuance of producer's license, duration — lines of authority — biennial renewal fee for agents, due when — failure to comply, effect.
375.019. Advisory board on licensing and examination of insurance producers — qualifications — terms — meetings — duties.
375.020. Continuing education for producers, required, exceptions — procedures — director to promulgate rules and regulations — fees, how determined, deposit of.
375.022. Registry of insurance producers maintained by insurer — termination of producer, insurer to notify director.
375.025. Temporary license — to whom issued.
375.031. Definitions.
375.033. Termination of contract, notice — agent not to do business.
375.035. Renewal after termination of producer's contract.
375.037. Director's investigation — appeal.
375.039. Commercial risks, certain class, cancellation, written notice to agent required, when.

375.046. Who deemed agent of unauthorized company.
375.051. Producer held as trustee of money collected.
375.052. Additional incidental fees — disclosure to applicant or insurer.
375.065. Credit insurance producer license — organizational credit entity license — application — fee — rules.
375.071. Centralized producer license registry, participation in.
375.076. No consideration for unlicensed persons.
375.106. Insurance producers, limitations on negotiated contracts.
375.116. Compensation of producer, regulations — not to receive pay from insured, exception.
375.136. Producer placing business with a nonadmitted company or nonresident is subject to chapter 384, RSMo.
375.141. Suspension, revocation, refusal of license — grounds — procedure.
375.158. Insurer shall comply with all insurance laws before doing business — commissions paid, to whom.
379.356. Excessive premiums and rebates prohibited.
384.043. Licensing requirements for surplus lines brokers, fee — bond — examination, exception — renewal, when, violation, effect.
375.021. Agent's license, when terminated — procedure.
375.027. Temporary license for applicant.
375.061. Agency must be licensed, requirements, fee — renewal, fee — violation, penalty.
375.081. Examination — held when — testing service authorized — issuance of license — rules and regulations.
375.082. Waiver of examination, when.
375.086. Broker's examination not required of certain persons.
375.091. Broker's license, issued to whom.
375.096. Broker's license, biennial renewal, fee — nonresident broker to complete continuing education requirements — reinstatement requirements.
375.101. Temporary broker's license issued, when.
375.121. Funds collected by broker to be kept separate.
375.142. Change of anniversary date, when.
B. Effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 148.400, 375.012, 375.014, 375.016, 375.017, 375.018, 375.019, 375.020, 375.021, 375.022, 375.025, 375.027, 375.031, 375.033, 375.035, 375.037, 375.039, 375.046, 375.051, 375.061, 375.065, 375.071, 375.076, 375.081, 375.082, 375.086, 375.091, 375.096, 375.101, 375.106, 375.116, 375.121, 375.136, 375.141, 375.142, 375.158, 379.356 and 384.043, RSMo 2000, are repealed and thirty new sections enacted in lieu thereof, to be known as sections 148.400, 374.285, 375.012, 375.014, 375.015, 375.016, 375.017, 375.018, 375.019, 375.020, 375.022, 375.025, 375.031, 375.033, 375.035, 375.037, 375.039, 375.046, 375.051, 375.052, 375.065, 375.071, 375.076, 375.106, 375.116, 375.136, 375.141, 375.158, 379.356 and 384.043, to read as follows:

148.400. DEDUCTIONS ALLOWED INSURANCE COMPANIES. — All insurance companies or associations organized in or admitted to this state may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, income taxes, franchise taxes, personal property taxes, valuation fees, registration fees and examination fees paid, including taxes and fees paid by the attorney in fact of a reciprocal or interinsurance exchange to the extent attributable to the principal business as such attorney in fact, under any law of this state. **Unless rejected by the general assembly by April 1, 2003, for all tax years beginning on or after January 1, 2003, a deduction for examination fees which exceeds an insurance company's or association's premium tax liability for the same tax year shall not be refundable, but may be carried forward to any subsequent tax year, not to exceed five years, until the full deduction is claimed; except that, notwithstanding the provisions of section 148.380, if any deduction is claimed through the carryforward provisions of this section, it shall be credited wholly against the general revenue fund and shall not cause a reduction in revenue to the county foreign insurance fund.**

374.285. EXPUNGEMENT OF CERTAIN DISCIPLINARY ACTION RECORDS. — Except as provided in section 375.141, RSMo, all records of disciplinary actions against an insurance agent, broker, agency or producer which resulted in a voluntary forfeiture of two hundred

dollars or less shall be expunged after a period of five years from the date of the execution of the voluntary forfeiture by the director of the department of insurance.

375.012. DEFINITIONS. — 1. As used in **[**this chapter**]** **sections 375.012 to 375.158**, the following words mean:

(1) **[**"Broker", an insurance broker is any natural person who, for a commission, brokerage consideration, or other thing of value, acts or aids in any manner in negotiating contracts of insurance, or in placing risks or in soliciting or effecting contracts of insurance as an agent for an insured other than himself and not as an agent of an insuring company or any other type of insurance carrier. The term "broker" shall not apply to a person working as an officer for an insurance carrier, or in a clerical, administrative or service capacity for an insurance carrier or for a licensed agent or broker provided that the person does not solicit contracts of insurance. The term "broker" shall not apply to an insured's placing, or negotiating the placement of, his own insurance; nor shall the term "broker" apply to any employee of an insured engaged in placing or negotiating for placement of insurance for his employer;**] "Business entity", a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity;**

(2) "Director", the director of the department of insurance;

(3) **[**"Insurance agency", any individual transacting or doing business under any name other than his true name, any partnership, unincorporated association or corporation, transacting or doing business with the public or insurance companies as an insurance agent or broker;

(4) "Insurance agent", any authorized agent of an insurer, or representative of the agent, who acts as an agent in the solicitation of, negotiation for, or procurement or making of, any insurance or annuity contract, other than the attorney in fact or a traveling salaried representative of a mutual, reciprocal, or stock insurer;

(5)**] "Home state", the District of Columbia and any state or territory of the United States in which the insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer;**

(4) "Insurance", any line of authority, including life, accident and health or sickness, property, casualty, variable life and variable annuity products, personal, credit and any other line of authority permitted by state law or regulation;

(5) "Insurance company" or "insurer", any person, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including health services corporations, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans, unless their exclusion from this definition can be clearly ascertained from the context of the particular statutory section under consideration. Insurer shall also include all companies organized, incorporated or doing business **[**under**] pursuant to** the provisions of chapters 375, 376, 377, 378, 379 **[**and**]**, 381 **and 384**, RSMo. **[**"Insurer" shall not include companies formed under section 354.700, RSMo.**]** Trusteed pension plans and profit sharing plans qualified **[**under**] pursuant to** the United States Internal Revenue Code as now or hereafter amended shall not be considered to be insurance companies or insurers within the definition of this section**[.]**;

(6) "Insurance producer" or "producer", a person required to be licensed pursuant to the laws of this state to sell, solicit or negotiate insurance;

(7) "License", a document issued by the director authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself shall not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance company;

(8) "Limited line credit insurance", credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (GAP) insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or

wholly extinguishing that credit obligation that the director determines should be designated a form of limited line credit insurance;

(9) "Limited line credit insurance producer", a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage through a master, corporate, group or individual policy;

(10) "Limited lines insurance", insurance involved in credit transactions, insurance contracts issued primarily for covering the risk of travel or any other line of insurance that the director deems necessary to recognize for the purposes of complying with subsection 5 of section 375.017;

(11) "Limited lines producer", a person authorized by the director to sell, solicit or negotiate limited lines insurance;

(12) "Negotiate", the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers;

(13) "Person", an individual or any business entity;

(14) "Personal lines insurance", property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(15) "Sell", to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company;

(16) "Solicit", attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;

(17) "Terminate", the cancellation of the relationship between an insurance producer and the insurer or the termination of the authority of the producer to transact the business of insurance;

(18) "Uniform business entity application", the current version of the National Association of Insurance Commissioners uniform business entity application for resident and nonresident business entities seeking an insurance producer license;

(19) "Uniform application", the current version of the National Association of Insurance Commissioners uniform application for resident and nonresident producer licensing.

2. All statutory references to "insurance agent" or "insurance broker" shall mean "insurance producer", as that term is defined pursuant to subsection 1 of this section.

375.014. INSURANCE PRODUCERS, LICENSE REQUIRED — INSURANCE PRODUCER LICENSE NOT REQUIRED, WHEN. — 1. No person shall **[**act**] sell, solicit or negotiate insurance** in this state **[**as an insurance agent**] for any class or classes of insurance** unless he **or she** is licensed **[**by the director**] for that line of authority** as provided in this chapter.

2. Nothing in this chapter shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" shall not include the officers, directors, employees, subsidiaries or affiliates of the insurer.

3. A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state; and

(a) The activities of the officer, director or employee are executive, administrative, managerial, clerical or a combination of these activities, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(b) The function of the officer, director or employee relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(c) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance, or for the purpose of enrolling individuals under plans, issuing certificates under plans or otherwise assisting in administering plans or who performs administrative services related to mass-marketed property and casualty insurance, when no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, directors or trustees are engaged in the administration or operation of a program of employee benefits for the employees of the employer or association or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance and who do not accompany insurance producer trainees on presentations to prospective insurance applicants;

(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(6) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that the person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

(7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission; or

(8) A licensed attorney providing probate or other court- required bonds on behalf of a client or client represented by the firm or office of the attorney.

4. Those individuals and business entities licensed as of January 1, 2003, shall be issued an individual insurance producer or a business entity insurance producer license as the licenses renew on or after January 1, 2003. The licenses held by individuals and business entities on the effective date of this act shall be deemed valid and accrue the rights, privileges and responsibilities of an insurance producer license until an insurance producer license is issued on renewal.

375.015. APPLICATION FOR LICENSURE, INSURANCE PRODUCERS. — 1. An individual applying for a resident insurance producer license shall make application to the director on the uniform application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the knowledge and belief of the applicant. Before approving the application, the director shall find that the individual:

(1) Is at least eighteen years of age;

(2) Has not committed any act that is a ground for denial, suspension or revocation set forth in section 375.141;

(3) Has paid a license fee in the sum of one hundred dollars; and

(4) Has successfully passed the examinations for the lines of authority for which the person has applied.

2. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the director shall find that:

(1) The business entity has paid a license fee in the sum of one hundred dollars;

(2) The business entity has designated a licensed individual insurance producer to be responsible for compliance with the insurance laws, rules and regulations of this state by the business entity; and

(3) Neither the business entity nor any of its officers, directors or owners has committed any act that is a ground for denial, suspension or revocation set forth in section 375.141.

3. The director may require any documents reasonably necessary to verify the information contained in an application.

4. In addition to designating a licensed individual insurance producer to be responsible for compliance with the insurance laws, rules and regulations of this state, the application shall contain a list of all insurance producers employed by or acting in behalf of or through the business entity and to whom the business entity pays any salary or commission for the solicitation, negotiation or procurement of any insurance contract.

5. Within twenty working days after the change of any information submitted on the application or upon termination of any insurance producer, the business entity shall notify the director of the change or termination. No fee shall be charged for any such change or termination.

6. If the director has taken no action within twenty-five working days of receipt of an application, the application shall be deemed approved and the applicant may act as a licensed insurance producer, unless the applicant has indicated a conviction for a felony or a crime involving moral turpitude.

375.016. EXAMINATION REQUIRED FOR INSURANCE PRODUCER'S LICENSE. — 1. **A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to subsection 5, 6 or 7 of this section. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted pursuant to the rules and regulations prescribed by the director.**

2. The director **[**shall issue a license to any natural person, who is at least eighteen years of age, and has complied with the requirements of section 375.018, authorizing the licensee to act as an insurance agent in respect to any or all types of insurance as specified in such license, on behalf of any company which is authorized to do and transact such kinds of insurance business in this state.

2. Any license issued shall authorize only the licensee named in the license to act individually as agent thereunder.**] may make arrangements, including contracting with an outside testing service, for administering examinations.**

3. Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the director.

4. An individual who fails to appear for the examination as scheduled or fails to pass the examination, may reapply for an examination and shall remit all required fees and forms before being rescheduled for another examination.

5. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state. The director may also verify that the applicant is or was licensed in good standing for the lines of authority requested through the producer database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, or any other method the director deems appropriate.

6. An individual licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence to become a resident insurance producer pursuant to subsection 1 of this section. No examination shall be required of that person to obtain any line of authority previously held in the prior state except where the director determines otherwise by regulation.

7. Individuals applying for limited lines producer licenses shall be exempt from examination.

375.017. NONRESIDENT PRODUCER'S LICENSE. — 1. **[**(1) The director shall not assess a greater fee for an insurance license or related service to a person not residing in the state based solely on the fact that the person does not reside in this state.

(2) The director shall waive any license application requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by subsection 2 of this section, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(3) A nonresident licensee's satisfaction of his or her home state's continuing education requirements for licensees shall constitute satisfaction of this state's continuing education requirements if the nonresident licensee's home state recognizes the satisfaction of its continuing education requirement imposed upon licensees from this state on the same basis. This section shall also apply to surplus line licensees licensed pursuant to chapter 384, RSMo.

2. (1) Unless denied pursuant to section 375.141, a nonresident person shall receive a nonresident agent or broker's license if:

(a) The person is currently licensed for the same line of authority as a resident and is in good standing in his or her home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by law;

(c) The person has submitted or transmitted to the director the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application; and

(d) The person's home state awards nonresident licenses to residents of this state on the same basis.**] Unless denied licensure pursuant to section 375.141, a nonresident person shall receive a nonresident producer license if:**

(1) The person is currently licensed as a resident and in good standing in his or her home state;

(2) The person has submitted the proper request for licensure and has paid the fees prescribed by the director;

(3) The person has submitted or transmitted to the director the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed uniform application or the uniform business entity application; and

(4) The home state of the person awards nonresident producer licenses to residents of this state on the same basis.

2. The director may verify the licensing status of the nonresident producer through the producer database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries or through any other method the director deems appropriate.

3. A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address within thirty days of the change of legal residence.

[(2)**]** **4.** Notwithstanding any other provision of **[**sections 375.012 to 375.146**] this chapter**, a person licensed as a surplus **lines** licensee **or producer** in his or her home state shall receive a nonresident surplus lines license pursuant to **[**subdivision (1)**] subsection 1** of this **[**subsection**] section**. Except as provided in **[**subdivision (1)**] subsection 1** of this **[**subsection**] section**, nothing in this **[**subsection**] section** otherwise amends or supercedes any provision of chapter 384, RSMo.

[(3)**]** **5.** Notwithstanding any other provision of **[**sections 375.012 to 375.146**] this chapter**, a person licensed as a limited line credit insurance **producer** or other type of limited lines **[**licensee**] producer** in his or her home state shall receive a nonresident limited lines **producer** license, pursuant to **[**subdivision (1)**] subsection 1** of this **[**subsection**] section**, granting the same scope of authority as granted under the license issued by **[**licensee's**] the** home state **of the producer**.

[3. An individual who applies for an agent or broker's license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in the state or the state's licensee database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the licensee was licensed in good standing for the line of authority requested.

4. Subsections 1 to 3 of this section do not apply to excess and surplus licensees licensed pursuant to chapter 384, RSMo, except as provided in subdivision (3) of subsection 1 and subsection 2 of this section.

5. Any bank or trust company in its sale or issuance of insurance products or services, as authorized pursuant to section 362.105, RSMo, shall be subject to the insurance laws of this state and rules adopted by the department of insurance.**] For the purposes of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to subdivisions (1) to (6) of subsection 1 of section 375.018.**

6. A satisfaction by the nonresident producer of the continuing education requirements of his or her home state for licensed insurance producers shall constitute satisfaction of the continuing education requirements of this state if the home state of the nonresident producer recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis. This subsection shall also apply to surplus lines licensees licensed pursuant to chapter 384, RSMo.

7. The director shall not assess a greater fee for an insurance producer license or related service to a person not residing in the state solely on the fact that the person does not reside in this state. The director shall waive any license application requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by subsection 1 of this section, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

375.018. ISSUANCE OF PRODUCER'S LICENSE, DURATION — LINES OF AUTHORITY — BIENNIAL RENEWAL FEE FOR AGENTS, DUE WHEN — FAILURE TO COMPLY, EFFECT. — 1. **[**In addition to any other requirement imposed by law or rule, no applicant for an agent's or broker's license shall be qualified therefor unless, within one year immediately preceding the date a written application is made to the director, the applicant has successfully completed a course of study approved by the director requiring the following hours of study, or the equivalent thereof, for the following licenses: Not less than twenty hours for a license limited to fire and allied lines insurance and twenty hours for general casualty insurance, or forty hours combined of fire and allied lines and general casualty insurance; and not less than fifteen hours for a license limited to life insurance and fifteen hours for accident and health insurance.**] Unless denied licensure pursuant to section 375.141, persons who have met the requirements of sections 375.014, 375.015 and 375.016 shall be issued an insurance producer license for a term of two years. An insurance producer may qualify for a license in one or more of the following lines of authority:**

(1) Life-insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(2) Accident and health or sickness-insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income;

(3) Property-insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) Casualty-insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property;

(5) Variable life and variable annuity products-insurance coverage provided under variable life insurance contracts and variable annuities;

(6) Personal lines-property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(7) Credit-limited line credit insurance;

(8) Any other line of insurance permitted under state laws or regulations.

2. Any **[**agent**] insurance producer** who is certified by the Federal Crop Insurance Corporation on September 28, **[**1985**] 1995**, to write federal crop insurance shall not be required to have a **[**fire and allied lines**] property** license for the purpose of writing federal crop insurance. **[**The director shall grant authority until revoked to such public and private educational organizations, technical colleges, trade schools, insurance companies or insurance trade organizations, or other approved organizations that provide satisfactory evidence that the courses of study actually taken by the applicant were in substantial compliance with the requirements established by the director. The director shall require the applicant to furnish a certificate of completion of any required courses of study from the authorized educational organizations. Every applicant seeking approval for a course of study by the director under this section shall pay to the director a filing fee of fifty dollars per course, unless it is a not-for-profit agents' group or association which provides no compensation to the course instructor. Such fee shall accompany any application form required by the director for such course approval. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval. Courses approved by the director prior to August 28, 1993, for which continuous certification is sought should be resubmitted for approval sixty days before the anniversary date of the director's previous approval.

2. Before any insurance agent's license is issued, there shall be on file in the office of the director the following:

(1) A written application made under oath by the prospective licensee in the form prescribed by the director. The application form shall contain answers to the following interrogatories: name, address, date of birth, sex, past employment for the three-year period immediately preceding the date of the application, past experience in insurance, status of

accounts with insurance companies and agents, criminal convictions or pleas of nolo contendere for felonies or misdemeanors, or currently pending felony charges or misdemeanor charges excluding minor traffic violations, and if a surety bond has ever been refused or revoked as a result of dishonest acts or practices. In addition, the application form shall contain a statement as to the kinds of insurance business in which the applicant intends to engage; and

(2) A fee of twenty-five dollars must accompany each application for an agent's license.

3. The director shall, in order to determine the competency of every individual applicant for a license, require the individual applicant to take and pass to the satisfaction of the director a written examination upon the kind or kinds of insurance business specified in his or her application. Such examinations shall be held at such times and places as the director shall from time to time determine. The director may, at his order or discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the director, and examination fees charged by such service shall be paid by the applicant. An examination fee represents an administrative expense and is not refundable.

4. The examination shall be as prescribed by the director and shall be of sufficient scope so as to reasonably test the applicant's knowledge relative to the kind or kinds of insurance which may be dealt with under the license applied for by the applicant. The applicant shall be notified of the result of the examination within twenty working days of the examination. The applicant may begin to act as an agent for those lines for which the applicant has passed an examination and completed the study requirements required by subsection 1 of this section and a license has been received by the applicant.

5. No examination or approved course of study required by subsection 1 of this section shall be required of:

(1) An applicant who is a ticket-selling agent or representative of a common carrier or other company who acts as an insurance agent only in reference to the issuance of insurance contracts primarily for covering the risk of travel;

(2) An applicant who holds a current license in another state which requires a written examination satisfactory to the director;

(3) An applicant for the same kind of license as that which was held in another state within one year next preceding the date of the application and which the applicant secured by passing a written examination and fulfilling comparable study requirements, and provided that the applicant is a legal resident of this state at the time of the application and is otherwise deemed by the director to be fully qualified;

(4) An applicant who is an owner of an individually owned business, his employee, or an officer or employee of a partnership or corporation who solicits, negotiates or procures credit life, accident and health or property insurance in connection with a loan or a retail time sale transaction made by the corporation, partnership, or individual business, or in a business in which there is conducted wholly or partly retail installment transactions under chapter 365, RSMo;

(5) Any person selling title insurance.

6. Every application for a license which may be granted without examination shall be accompanied by a fee of twenty-five dollars.

7. Subsection 1 of this section shall not apply to any person licensed as an agent or broker on January 1, 1986, unless the agent or broker applies for a type of license or line of insurance for which the agent or broker is not licensed as of January 1, 1986.

8.**]** **3.** The biennial renewal fee for **[**an agent's**] a producer's** license is **[**twenty-five**] one hundred** dollars for each license. **[**An agent's**] A producer's** license shall be renewed biennially on the anniversary date of issuance and continue in effect until refused, revoked or suspended by the director in accordance with section 375.141**[**; except that if the biennial renewal fee for the license is not paid within ninety days after the biennial anniversary date or if the agent has not complied with section 375.020 if applicable within ninety days after the biennial anniversary date, the license terminates as of ninety days after the biennial anniversary date**]**.

[9. Any nonresident agent who has not complied with the provisions of section 375.020 may not reapply for an agent license until that agent has taken the continuing education courses required under section 375.020.

10. An agent whose license terminated for nonpayment of the biennial renewal fee or noncompliance with section 375.020 may apply for a new agent's license because of such nonpayment or noncompliance, except that such agent must comply with all provisions of this section regarding issuance of a new license if such license was terminated for noncompliance with section 375.020, or shall pay a late fee at the rate of twenty-five dollars per month or fraction thereof after the biennial anniversary date if such license was terminated for nonpayment of the renewal fee, except that nothing in this subsection shall require the director to relicense any agent determined to have violated the provisions of subsection 1 of section 375.141.**]**

4. An individual insurance producer who allows his or her license to expire may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. The insurance producer seeking relicensing pursuant to this subsection shall provide proof that the continuing education requirements have been met and shall pay a penalty of twenty-five dollars per month that the license was expired in addition to the requisite renewal fees that would have been paid had the license been renewed in a timely manner. Nothing in this subsection shall require the director to relicense any insurance producer determined to have violated the provisions of section 375.141.

5. The license shall contain the name, address, identification number of the insurance producer, the date of issuance, the lines of authority, the expiration date and any other information the director deems necessary.

6. Insurance producers shall inform the director by any means acceptable to the director of a change of address within thirty days of the change. Failure to timely inform the director of a change in legal name or address may result in a forfeiture not to exceed the sum of ten dollars per month.

7. In order to assist the director in the performance of his or her duties, the director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the organization oversees or through any other method the director deems appropriate, to perform any ministerial functions, including the collection of fees, related to producer licensing that the director may deem appropriate.

8. Any bank or trust company in the sale or issuance of insurance products or services shall be subject to the insurance laws of this state and rules adopted by the department of insurance.

9. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any other fine or sanction imposed for failure to comply with renewal procedures.

375.019. ADVISORY BOARD ON LICENSING AND EXAMINATION OF INSURANCE PRODUCERS — QUALIFICATIONS — TERMS — MEETINGS — DUTIES. — To assist the director to carry out the provisions of section **[**375.018**] 375.016** there shall be an "Advisory Board on Licensing and Examination of Insurance **[**Agents and Brokers**] Producers**" consisting of nine insurance **[**agents or brokers**] producers** duly licensed by the state of Missouri. An insurance **[**agent or broker**] producer** to be eligible for service on the state board on examinations shall be a citizen of the United States**[**,**] and** a **licensed** resident insurance **[**agent or broker of the state of Missouri, licensed as an insurance agent or broker by the state of Missouri**] producer**. Members of the board shall be appointed by the director. The director shall appoint four members for two-year terms and five members for three-year terms.

Membership on the board shall terminate for failure to meet any of the qualifications for eligibility, death, disability, inability to serve or resignation, absence from two consecutive regular meetings without acceptable excuse filed in writing to the board, or removal by the director. The board shall meet regularly at a place designated by the director within the state of Missouri at least annually and whenever deemed necessary by the director. At the regular meeting the board shall elect officers and transact any other such business as may properly come before the board. Five members shall constitute a quorum. The officers of the board shall consist of a chairman and vice chairman elected for a term of one year. The chairman, or in the event of his inability to serve, the vice chairman, shall preside at all meetings of the board, appoint committees, and perform the usual duties of such office. The board shall appoint a secretary who shall be a member of the board. The secretary shall keep correct minutes of all meetings of the board, furnishing a copy to each member and the director, mail notices of all meetings no less than ten days in advance thereof, and otherwise perform the usual duties of such office. The board shall make recommendations, including, but not limited to, **[**courses of study required under subsection 1 of section 375.018,**]** the approval of any educational or trade organizations and insurance companies, and any other matter that pertains to the **[**study**] insurance producer continuing education** requirements **[**provided by subsection 1 of section 375.018**]**. The board shall seek at all times to maintain and increase the effectiveness of examinations for insurance **[**agent or broker**] producer** licenses and shall advise and consult with the director with respect to the preparation and the conduct of insurance **[**agent or broker**] producer** examinations. The board shall recommend such changes as may expedite or improve any phase of the examination procedure or the method of conducting examinations. The board shall receive suggestions regarding the examination for consideration and discussion. The board shall make rules and determine procedure, with the approval of the director, in reference to other matters which may properly come before a board on examinations. Each member of the board on beginning his or her term of office shall file with the director a written pledge of faithful and honorable performance. The members of the board shall receive no compensation or expenses in connection with the performance of their duties.

375.020. CONTINUING EDUCATION FOR PRODUCERS, REQUIRED, EXCEPTIONS — PROCEDURES — DIRECTOR TO PROMULGATE RULES AND REGULATIONS — FEES, HOW DETERMINED, DEPOSIT OF. — 1. Beginning January 1, 1990, each insurance **[**agent and insurance broker**] producer**, unless exempt **[**under subsection 7, 8 or 9 of this**] pursuant to** section **375.016**, licensed to sell insurance in this state shall successfully complete courses of study as required by this section. Any person licensed to act as an insurance **[**agent or insurance broker**] producer** shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of ten hours of instruction for a life or accident and health license or both a life and an accident and health license and a minimum ten hours of instruction for a property or casualty license or both a property and a casualty license. Sixteen hours of training will suffice for those with a life, health, accident, property and casualty license. Of the sixteen hours training required above, the hours need not be divided equally. The courses or programs shall include instruction on Missouri law. Course credit shall be given to members of the general assembly as determined by the department.

2. Subject to approval by the director, the courses or programs of instruction which shall be deemed to meet the director's standards for continuing educational requirements shall include, but not be limited to, the following:

[(a)**] (1)** American College Courses (CLU, ChFC);

[(b)**] (2)** Life Underwriters Training Council (LUTC);

[(c)**] (3)** Certified Insurance Counselor (CIC);

[(d)**] (4)** Chartered Property and Casualty Underwriter (CPCU);

[(e)**] (5)** Insurance Institute of America (IIA);

[(f)**] (6)** An insurance related course taught by an accredited college or university or qualified instructor who has taught a course of insurance law at such institution;

[(g)**] (7)** A course or program of instruction or seminar developed or sponsored by any authorized insurer, recognized **[**agents'**] producer** association or insurance trade association. A local **[**agents'**] producer** group may also be approved if the instructor receives no compensation for services.

3. A person teaching any approved course of instruction or lecturing at any approved seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such course, seminar or program.

4. Excess classroom hours accumulated during any two-year period may be carried forward to the two-year period immediately following the two-year period in which the course, program or seminar was held.

5. For good cause shown, the director may grant an extension of time during which the educational requirements imposed by this section may be completed, but such extension of time shall not exceed the period of one calendar year. The director may grant an individual waiver of the mandatory continuing education requirement upon a showing by the licensee that it is not feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be granted for reasons including, but not limited to:

(1) Serious physical injury or illness;

(2) Active duty in the armed services for an extended period of time;

(3) Residence outside the United States; or

(4) Licensee is at least seventy years of age.

6. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs or seminars of instruction taken and successfully completed by such person. **[**A filing fee shall be paid by the person furnishing the report as determined by the director to be necessary to cover the administrative cost related to the handling of such certification reports, subject to the limitations imposed in subsection 10 of this section.**] Every provider of continuing education courses authorized in this state shall, within thirty working days of a licensed producer completing its approved course, provide certification to the director of the completion in a format prescribed by the director.**

7. The provisions of this section shall not apply to those natural persons holding licenses for any kind or kinds of insurance for which an examination is not required by the law of this state, nor shall they apply to any **[**such**]** limited **lines insurance producer license** or restricted license as the director may exempt.

8. **[**The provisions of this section shall not apply to those natural persons holding or applying for a license to act as an insurance agent or insurance broker in Missouri who reside in a state that has enacted and implemented a mandatory continuing education law or regulation pertaining to the type of license then held or applied for by such person. However, those natural persons holding or applying for a Missouri agent or broker license who reside in states which have no mandatory continuing education law or regulations shall be subject to all the provisions of this section to the same extent as resident Missouri agents and brokers.

9.**]** The provisions of this section shall not apply to a life insurance **[**agent**] producer** who is limited by the terms of a written agreement with the insurer**[**, which the insurer filed on that agent's behalf the appropriate appointment documents with the department of insurance,**]** to transact only specific life insurance policies having an initial face amount of five thousand dollars or less, or annuities having an initial face amount of ten thousand dollars or less, that are designated by the purchaser for the payment of funeral or burial expenses. The director may require the insurer **[**appointing such agents**] entering into the written agreements with the insurance producers pursuant to this subsection** to certify as to the **[**agents'**]** representations **of the insurance producers**.

[10.**]** **9.** Rules and regulations necessary to implement and administer this section shall be promulgated by the director **[**of the department of insurance**]**, including, but not limited to, rules and regulations regarding the following:

(1) Course content and hour credits: The insurance advisory board established by section 375.019 shall be utilized by the director to assist him in determining acceptable content of courses, programs and seminars to include classroom equivalency;

(2) Filing fees for course approval: Every applicant seeking approval by the director of a continuing education course under this section shall pay to the director a filing fee of fifty dollars per course**[**, except that such total fee shall not exceed two hundred fifty dollars per year for any single applicant**]**. Fees shall be waived for **state and** local **[**agents'**] insurance producer** groups **[**if the instructor receives no compensation for services**]**. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval. Courses approved by the director prior to August 28, 1993, for which continuous certification is sought should be resubmitted for approval sixty days before the anniversary date of the **[**director's**]** previous approval**[**;

(3) Filing fee for continuing education certification: The director has the authority to determine the amount of the filing fee to be paid by agents and brokers at the time of license renewal, which shall be set at an amount to produce revenue which shall not substantially exceed the cost of administering this section, but in no event shall such fee exceed ten dollars per biennial report filed**]**.

[11.**]** **10.** All funds received pursuant to the provisions of this section shall be transmitted by the director **[**of the department of insurance**]** to the department of revenue for deposit in the state treasury to the credit of the department of insurance dedicated fund. All expenditures necessitated by this section shall be paid from funds appropriated from the department of insurance dedicated fund by the legislature. **[**Any money in the insurance continuing education trust fund on June 26, 1991, shall be transferred to the credit of the department of insurance dedicated fund.

12. When the insurance agent or insurance broker pays his biennial renewal fee, he shall also furnish the written certification and filing fee required by this section.**]**

375.022. REGISTRY OF INSURANCE PRODUCERS MAINTAINED BY INSURER — TERMINATION OF PRODUCER, INSURER TO NOTIFY DIRECTOR. — 1. **[**Every insurance company**] An insurer** authorized to **[**provide or**]** transact **the business of** insurance in this state shall**[**, within thirty working days of an appointment of an agent to act for such insurance company, notify the director of such appointment upon forms prescribed by the director. Each appointment will result in a ten-dollar fee. The company shall remit these fees to the department of insurance on a quarterly basis. Such appointments may be made by appointing individual agents or by designating a licensed agency or a licensed organizational credit agency. The designation of an agency or an organizational credit agency shall be deemed to appoint all agents listed by such agency or listed as employees of such organizational credit agency pursuant to section 375.061 or section 375.065 to act for the insurance company in the lines for which the agent is licensed and the agency is designated. Any additional agents listed by the agency or additional agents listed by the organizational credit agency pursuant to section 375.061 or section 375.065 after the designation of the agency or the organizational credit agency shall be deemed appointed for all companies with existing designations of the agency or the organizational credit agency. The appointment of an agent pursuant to the provisions of this subsection shall terminate upon the agent's termination by or resignation from the agency or the organizational credit agency, upon termination of the agency or the organizational credit agency by the insurance company, or upon nonrenewal, suspension, surrender or revocation of the agent's license. Every such insurance company shall notify the director within thirty working days of the termination of the appointment of any agent whether the termination is by action of the company or

resignation of the agent. Each termination will result in a ten-dollar fee. When the cause of termination is for a reason that, pursuant to the provisions of section 375.141, would permit the director to revoke, suspend or refuse to issue an agent's license, the notice shall state the cause and circumstances of the termination. The notice shall be filed promptly after termination and within such time as may be prescribed by an appropriate order or regulation of the director of the department of insurance. The director may prescribe the form upon which the notification is to be given. The director shall upon written request by the agent furnish to him or her a copy of all information obtained pursuant to this section.

2. Any information filed by an insurance company or obtained by the director pursuant to this section and any document, record or statement required by the director pursuant to the provisions of this section shall be deemed confidential and absolutely privileged. There shall be no liability on the part of, and no cause of action shall arise against, any insurer, its agents or its authorized investigative sources or the director or the director's authorized representatives in connection with any written notice required by this section made by them in good faith.**] maintain a register of appointed insurance producers who are authorized to sell, solicit or negotiate contracts of insurance on behalf of the insurer. Within thirty days of an insurer authorizing an insurance producer to transact the business of insurance on its behalf, the insurer shall enter the name and license number of the insurance producer in the company register of appointed insurance producers. No fee shall be charged for adding a producer to or terminating a producer from the register.**

2. An insurance producer shall not act on behalf of an insurer unless the insurance producer is listed on the company register of appointed insurance producers authorized to sell, solicit or negotiate contracts of insurance on behalf of the insurer.

3. The company register of appointed insurance producers shall be open to inspection and examination by the director during regular business hours of the insurer.

4. The company register of appointed insurance producers may be maintained electronically.

5. An insurer that terminates the appointment, employment, contract or other insurance business relationship with an insurance producer for one of the reasons set forth in section 375.141 shall, within thirty days following the effective date of the termination, notify the director of the reason for termination. The insurer shall also update its company register of appointed insurance producers by entering the effective date of the termination within thirty days after the termination.

6. An insurer that terminates the appointment, employment, contract or other insurance business relationship with an insurance producer for any reason not set forth in section 375.141, shall update its company register of appointed insurance producers by entering the effective date of the termination within thirty days after the termination.

7. The insurer shall promptly notify the director if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the director in accordance with subsection 1 of this section had the insurer then known of its existence.

8. Any information filed by an insurance company or obtained by the director pursuant to this section and any document, record or statement required by the director pursuant to the provisions of this section shall be deemed confidential and absolutely privileged. There shall be no liability on the part of, and no cause of action shall arise against, any insurer, its producers or its authorized investigative sources or the director or the director's authorized representatives in connection with any written notice required by the section made by them in good faith. The director shall, upon written request by the producer, furnish to the producer a copy of all information obtained pursuant to this section.

9. The director is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the duties of the director.

10. Neither the director nor any person who received documents, materials or other information while acting under the authority of the director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection 1 of this section.

11. In order to assist in the performance of the duties of the director pursuant to this section, the director:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection 5 of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information; and

(2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

12. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the director pursuant to this section or as a result of sharing as authorized in subsection 7 of this section.

13. Nothing in this chapter shall prohibit the director from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to chapter 610, RSMo, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners or any other like database or clearinghouse as deemed appropriate by the director.

14. If the director suspends, revokes, or refuses to issue or renew a license pursuant to section 375.141, he or she shall provide public notice.

375.025. TEMPORARY LICENSE — TO WHOM ISSUED. — 1. The director may issue **[**an agent's**] a** temporary **insurance producer** license **for a period not to exceed ninety days** without requiring **[**the applicant to pass a written**] an** examination **if the director deems the temporary license is necessary for the servicing of an insurance business** in the following circumstances:

(1) To the surviving spouse or **[**next of kin or the**] court-appointed** personal representative of a **[**deceased agent, or to the spouse, next of kin, employee, or conservator of a**]** licensed **[**agent becoming**] insurance producer who dies or becomes mentally or physically** disabled **[**because of sickness, mental or physical disability, or injury, if in the director's opinion a temporary license is necessary**] to allow adequate time** for the **[**continuation**] sale** of the **insurance** business **[**of the agent thereby affected. Such license may be issued for a term not exceeding ninety days and the director may in his discretion renew such license for an additional term or terms of ninety days each, not exceeding in the aggregate fifteen months**] owned by the producer or to provide for the training and licensing of new personnel to operate the business of the producer;**

(2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

[(2)**]** **(3)** To the designee of a licensed **[**agent who shall enter**]** **insurance producer entering** active service in the armed forces of the United States **[**for such period of time as in the opinion of the director may be necessary for the continuation of the business of the agent thereby affected.**]**; or

(4) In any other circumstance in which the director deems that the public interest will best be served by the issuance of the license.

2. The director may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The director may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The director may revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

375.031. DEFINITIONS. — As used in sections 375.031 to 375.039, the following words and terms mean:

(1) "Director", the director of the department of insurance;

(2) "Exclusive **[**agent**]** **insurance producer**", any licensed **[**agent**]** **insurance producer** whose contract with an insurer requires the **[**agent**]** **insurance producer** to act **as an agent** only for that insurer or a group of insurers under common ownership or control or other insurers authorized by that insurer;

(3) "Independent insurance **[**agent**]** **producer**", any licensed **[**agent**]** **insurance producer** representing an insurance company as an independent contractor and not as an employee, or any individual, partnership or corporation transacting business with the public or insurance companies as an **agent is an** independent insurance **[**agent**]** **producer**, but shall not include an exclusive **[**agent**]** **insurance producer**;

(4) "Insurer", any property and casualty insurance company doing business in the state of Missouri.

375.033. TERMINATION OF CONTRACT, NOTICE — AGENT NOT TO DO BUSINESS. — 1. All contracts between an insurer and an independent insurance **[**agent**]** **producer** in effect in the state of Missouri on or after September 28, 1979, shall not be terminated or canceled by the insurer except by mutual agreement or unless ninety days' written notice in advance has been given to the **[**agent**]** **independent insurance producer** and the director of insurance.

2. During the ninety days' notice period the independent insurance **[**agent**]** **producer** shall not write or bind any new business on behalf of the insurer without specific written approval.

375.035. RENEWAL AFTER TERMINATION OF PRODUCER'S CONTRACT. — 1. Any insurer in this state shall, upon termination or cancellation of an independent insurance **[**agent's**]** **producer's** contract, permit the renewal of all contracts of insurance written by the independent insurance **[**agent**]** **producer** for a period of one year from the date of termination, as determined by the underwriting requirements of the insurer. If any insured fails to meet the current underwriting requirements of the insurer, the insurer shall give the terminated independent insurance **[**agent**]** **producer** and the insured thirty days' notice of its intention not to renew the contract of insurance.

2. Any insurer renewing contracts of insurance in accordance with this section shall pay commissions for the renewals to the terminated or canceled independent insurance **[**agent**]**

producer in the same amount and manner as paid to the independent insurance **[**agent**]** **producer** under the terminated or canceled contract.

3. When the insurer renews a contract of insurance **[**under**]** **pursuant to** this section, the renewal shall be for a time period equal to the greater of one year or one additional term of the term specified in the original contract.

375.037. DIRECTOR'S INVESTIGATION — APPEAL. — 1. The director of insurance, on the written complaint of any person, or when **[**he**]** **the director** deems it necessary without a complaint, shall determine whether there has been a violation of sections 375.031 to 375.037. After such determination, the director shall notify all parties concerned by certified mail and shall prescribe a method of cancellation to be followed by the concerned parties. Any party who is aggrieved by the decision of the director of insurance shall be entitled to judicial review thereof, as provided in sections 536.100 to 536.140, RSMo.

2. Sections 375.031 to 375.037 shall not apply if the director determines nonrenewal is necessary to preserve an insurer's solvency or to protect the insured's interest. Nor shall sections 375.031 to 375.037 apply in the case of fraud, failure to properly remit premiums, or whenever the director determines the license of the **[**agent**]** **insurance producer** could be revoked or not renewed **[**under**]** **pursuant to** the provisions of section 375.141.

3. If any provision of sections 375.031 to 375.037 or the application thereof to any person or circumstances is held invalid, the validity of the remainder of sections 375.031 to 375.037 and of the application of such provision to other persons and circumstances shall not be affected thereby.

375.039. COMMERCIAL RISKS, CERTAIN CLASS, CANCELLATION, WRITTEN NOTICE TO AGENT REQUIRED, WHEN. — 1. No insurer may cancel, terminate or otherwise withdraw coverage for a certain class of commercial risk, unless written notice of such cancellation, termination, or withdrawal is given to the insurer's independent insurance **[**agent**]** **producer** authorized to sell such insurance coverage at least sixty days prior to such cancellation, termination or withdrawal.

2. The provisions of subsection 1 of this section shall not apply if the cancellation, termination or withdrawal of coverage by an insurer is by reason of reinsurance requirements, adverse loss experience, or by the requirement of the Missouri department of insurance. In these circumstances, the notice described in subsection 1 of this section shall be given at least thirty days prior to such cancellation, termination or withdrawal.

375.046. WHO DEEMED AGENT OF UNAUTHORIZED COMPANY. — Any person or persons in this state who shall receipt for any money on account of or for any contract of insurance made by **[**him or them**]** **such person or persons** for any insurance company or association not at the time authorized to do business in this state, or who shall receive or receipt for any money from other persons, to be transmitted to any such insurance company or association, either in or out of this state, for a policy or policies of insurance issued by the company or association, or for any renewal thereof, although the same may not be required by **[**him or them**]** **such person or persons** as **[**agents**]** **insurance producers**, or who shall make or cause to be made, directly or indirectly, any contract of insurance for the company or association, shall be deemed to all intents and purposes **[**an agent**]** **a producer** of the company or association, and shall be subject to all the provisions and regulations and liable to all the penalties provided and fixed by sections 375.010 to 375.920.

375.051. PRODUCER HELD AS TRUSTEE OF MONEY COLLECTED. — 1. Any **[**person**]** **insurance producer** who shall be appointed or who shall act **[**as agent for**]** **on behalf of** any insurance company within this state, or who shall, **[**as agent**]** **on behalf of any insurance company**, solicit applications, deliver policies or renewal receipts and collect premiums thereon,

or who shall receive or collect moneys from any source or on any account whatsoever, **[**as agent, for**]** **on behalf of** any insurance company doing business in this state, shall be held responsible in a trust or fiduciary capacity to the company for any money so collected or received by him **or her** for **[**such**]** **the insurance** company.

2. Any insurance producer who shall act on behalf of any applicant for insurance or insured within this state, or who shall, on behalf of any applicant for insurance or insured, seek to place insurance coverage, deliver policies or renewal receipts and collect premiums thereon, or who shall receive or collect moneys from any source or on any account whatsoever, shall be held responsible in a trust or fiduciary capacity to the applicant for insurance or insured for any money so collected or received by him or her.

3. Nothing in this section shall be construed to require any insurance producer to maintain a separate bank account or deposit for the funds of each payor, as long as the funds so held are reasonably ascertainable from the books of account and records of the insurance producer.

375.052. ADDITIONAL INCIDENTAL FEES — DISCLOSURE TO APPLICANT OR INSURER. — An insurer or insurance producer may charge additional incidental fees for premium installments, late payments, policy reinstatements, or other similar services specifically provided for by law or regulation. Such fees shall be disclosed to the applicant or insured in writing.

375.065. CREDIT INSURANCE PRODUCER LICENSE — ORGANIZATIONAL CREDIT ENTITY LICENSE — APPLICATION — FEE — RULES. — 1. Notwithstanding any other provision of this chapter, the director may license credit insurance **[**agents**]** **producers** by issuing individual licenses to **[**such agents**]** **each credit insurance producer** or by issuing an organizational credit **[**agency**]** **entity** license to a resident or nonresident applicant who has complied with the requirements of this section. An organizational credit **[**agency**]** **entity** license authorizes the **[**licensee's**]** employees **of the licensee** who are at least eighteen years of age, acting on behalf of and supervised by the licensee and whose compensation is not primarily paid on a commission basis to act as **[**agents**]** **insurance producers** for the following types of insurance:

(1) Credit life insurance;

(2) Credit accident and health insurance;

(3) Credit property insurance;

(4) Credit involuntary unemployment insurance;

(5) Any other form of credit or credit-related insurance approved by the director.

2. To obtain an organizational credit **[**agency**]** **entity** license, an applicant shall submit to the director **[**an application in a form prescribed by the director**]** **the uniform business entity application** along with a fee of one hundred dollars. All applications shall include the following information:

(1) The name of the **[**agency**]** **business entity**, the business address or addresses of the **[**agency**]** **business entity** and the type of ownership of the **[**agency**]** **business entity**. If **[**an agency**]** **a business entity** is a partnership or unincorporated association, the application shall contain the name and address of every person or corporation having a financial interest in or owning any part of **[**such agency**]** **the business entity**. If **[**an agency**]** **the business entity** is a corporation, the application shall contain the names and addresses of all officers and directors of the corporation. If the **[**agency**]** **business entity** is a limited liability company, the application shall contain the names and addresses of all members and officers of the limited liability company;

(2) A list of all persons employed by the **[**agency**]** **business entity** and to whom **[**the agency**]** **it** pays any salary or commission for the **sale,** solicitation **[**or**]**, negotiation **or procurement** of any contracts of credit life, credit accident and health, credit involuntary unemployment, credit leave of absence, credit property or any other form of credit or

credit-related insurance approved by the director. **Any changes in the list of employees of the business entity due to hiring or termination or any other reason shall be submitted to the director within ten days of the change.**

3. **[**An organizational credit agency authorized pursuant to this section shall be deemed a licensed agency for the purposes of subsection 1 of section 375.061 and section 375.141.**]** All persons included on the list referenced in subdivision (2) of subsection 2 of this section shall be deemed **[**licensed agents**] insurance producers** pursuant to the **[**provision**] provisions** of **subsection 1 of** section **[**375.016**] 375.014** for the authorized lines of credit insurance, and shall be deemed licensed **[**agents**] insurance producers** for the purposes of section 375.141, notwithstanding the fact that individual licenses are not issued to those persons included on **[**such**] the business entity application** list.

4. Upon receipt of a completed application and payment of the requisite fees, the director, if satisfied that an applicant **[**organizational credit agency**]** has complied with all license requirements contained in this section, shall issue the applicant an organizational credit **[**agency**] business entity** license which shall remain in effect for one year or until suspended or revoked by the director, or until the **[**agency**] organizational credit business entity** ceases to operate as a legal entity in this state. Each organizational credit **[**agency**] business entity** shall renew its license annually, on or before the anniversary date of the original issuance of the license, by:

(1) Paying a renewal fee of fifty dollars;

(2) Providing the director a list of all employees **selling,** soliciting, negotiating and procuring credit insurance, and paying a fee of eighteen dollars per each **[**such**]** employee.

5. Licenses **of organizational credit business entities** which are not timely renewed shall expire **[**thirty days after**] on** the anniversary date of the original issuance. **[**The director shall assess a penalty of twenty-five dollars per month if a formerly licensed credit agency operates as such without a current license.**] An organizational credit business entity that allows the license to expire may, within twelve months of the due date of the renewal, reinstate the license by paying the license fee that would have been paid had the license been renewed in a timely manner plus a penalty of twenty-five dollars per month that the license was expired.**

6. Notwithstanding any other provision of law to the contrary, this section shall not be construed to prohibit an insurance company from paying a commission or providing another form of remuneration to a duly licensed organizational credit **[**agency**] business entity**.

7. The director shall have the power to promulgate such rules and regulations as are necessary to implement the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

375.071. CENTRALIZED PRODUCER LICENSE REGISTRY, PARTICIPATION IN. — [Unless exempted by subsection 7 of section 375.018, no person shall act as or hold himself out to be a broker until he has satisfied the study requirements of subsection 1 of section 375.018 and has procured a license as required by this chapter, and no broker shall solicit or take applications for, procure, or place for others any kind or kinds of insurance, or any subdivision thereof, for which he is not then licensed.**] 1. The director may participate in a centralized producer license registry, in whole or in part, with any entity the director deems appropriate, including but not limited to the National Association of Insurance Commissioners, or any affiliates or subsidiaries such organization oversees, in which insurance producer licenses may be centrally or simultaneously effected for all states that require an insurance producer license and that participate in the centralized producer license registry.**

2. If the director finds that participation in the centralized producer license registry is in the public interest, the director may adopt by rule any uniform standards and procedures consistent with this chapter as are necessary to participate in the registry,

including the central collection of all fees for licenses that are processed through the registry.

375.076. NO CONSIDERATION FOR UNLICENSED PERSONS. — **[**Any person desiring a license to act as a broker shall file with the director a fee of one hundred dollars and his written application in such form and give such information respecting his qualifications as the director may reasonably require.**]** **1. An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed and is not so licensed.**

2. A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed and is not so licensed.

3. Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed at the time of the sale, solicitation or negotiation and was so licensed at that time.

4. An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to a business entity licensed as an insurance producer or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate subdivision (9) of section 375.936 or section 379.356, RSMo. Under no circumstances may an insurer or insurance producer pay or assign commissions, service fees, brokerages or other valuable consideration to a person whose license is under suspension or revocation.

375.106. INSURANCE PRODUCERS, LIMITATIONS ON NEGOTIATED CONTRACTS. — [Brokers**] Insurance producers acting on behalf of an applicant for insurance or insured** shall negotiate contracts of insurance only with **[**qualified**] authorized** domestic insurance companies, licensed insurance **[**agencies or their agents, or**] insurance producers,** foreign insurance companies duly admitted to do business in this state, or with a duly licensed surplus lines broker. **[**Every broker shall notify the director of those insurance companies with whom he places risks. Such notification shall not take place more than ten days after he places the first such risk with such insurance company or surplus lines broker. Every broker shall also immediately notify the director when he no longer intends to place such risks with such insurance company or surplus lines broker on a regular basis. Willful failure of a broker to comply with this requirement shall cause the revocation or suspension of all licenses held by the broker.**]**

375.116. COMPENSATION OF PRODUCER, REGULATIONS — NOT TO RECEIVE PAY FROM INSURED, EXCEPTION. — 1. An insurance **[**carrier or agent thereof or broker**] company or insurance producer** may pay money, commissions or brokerage, or give or allow anything of value, for or on account of negotiating contracts of insurance, or placing or soliciting or effecting contracts of insurance, to a duly licensed **[**broker**] insurance producer**.

2. Nothing in this chapter shall abridge or restrict the freedom of contract of insurance **[**carriers or agents thereof or brokers**] companies or insurance producers** with reference to the amount of commissions or fees to be paid to **[**such brokers and such**] the insurance producers and the** payments are expressly authorized.

3. No insurance **[**broker**] producer** shall have any right to compensation**[**,**]** other than commissions deductible from premiums on insurance policies or contracts**[**,**]** from any **applicant for insurance or** insured **[**or prospective insured**]** for or on account of the negotiation or procurement of, or other service in connection with, any contract of insurance made or negotiated in this state or for any other services on account of **[**such**]** insurance policies or contracts, including adjustment of claims arising therefrom, unless the right to compensation is based upon

a written agreement between the **[**broker**]** **insurance producer** and the insured specifying or clearly defining the amount or extent of the compensation. Nothing **[**herein**]** contained **in this section** shall affect the right of any **[**broker**]** **insurance producer** to recover from the insured the amount of any premium or premiums for insurance effectuated by or through the **[**broker**]** **insurance producer**.

4. No insurance **[**broker**]** **producer** shall, in connection with the negotiation, procurement, issuance, delivery or transfer in this state of any contract of insurance made or negotiated in this state, directly or indirectly, charge or receive from the **applicant for insurance or** insured **[**or prospective insured**]** therein any greater sum than the rate of premium fixed therefor and shown on the policy by the insurance **[**carrier obligated as such therein**]** **company**, unless the **[**broker**]** **insurance producer** has a right to compensation for services created in the manner specified in subsection 3 **of this section**.

375.136. PRODUCER PLACING BUSINESS WITH A NONADMITTED COMPANY OR NONRESIDENT IS SUBJECT TO CHAPTER 384, RSMO. — Any **[**broker**]** **insurance producer** placing business with a nonresident agent **or producer** of a nonadmitted insurance **[**carrier**]** **company** or direct with a nonadmitted insurance **[**carrier**]** **company** or nonresident broker **or insurance producer** shall be subject to the provisions of chapter 384, RSMo.

375.141. SUSPENSION, REVOCATION, REFUSAL OF LICENSE — GROUNDS — PROCEDURE. — 1. The director may **[**revoke or**]** suspend, **[**for such period as he or she may determine, any**]** **revoke, refuse to issue or refuse to renew an insurance producer** license **[**of any insurance agent, agency or broker if it is determined as provided by sections 621.045 to 621.198, RSMo, that the licensee or applicant has, at any time, or if an insurance agency, the officers, owners or managers thereof have:

(1) In their dealings as an agent, broker or insurance agency, knowingly violated any provisions of, or any obligation imposed by, the laws of this state, department of insurance rules and regulations, or aided, abetted or knowingly allowed any insurance agent or insurance broker acting in behalf of an insurance agency to violate such laws, orders, rules or regulations which result in the revocation or suspension of the agent's or broker's license notwithstanding the same may provide for separate penalties;

(2) Obtained or attempted to obtain license by fraud, misrepresentation or made a material misstatement in the application for license;

(3) Been convicted of a felony or crime involving moral turpitude;

(4) Demonstrated lack of trustworthiness or competence;

(5) Misappropriated or converted to his, her or its own use or illegally withheld money belonging to an insurance company, its agent, or to an insured or beneficiary or prospective insurance buyer;

(6) Practiced or aided or abetted in the practice of fraud, forgery, deception, collusion or conspiracy in connection with any insurance transaction;

(7) Acted as an insurance agency through persons not licensed as insurance agents or insurance brokers;

(8) Acted as an insurance agent, insurance agency, or insurance broker when not licensed as such;

(9) Had revoked or suspended any insurance license by another state;

(10) Committed unfair practices as defined in section 375.936;

(11) Sought the license for the primary purpose of soliciting, negotiating or procuring insurance contracts covering himself or herself or his or her family or insurance on property owned by his or her employer or any person who is employed by him or her or by a corporation, partnership or association of which he or she shall own or control a majority of the voting stock or a controlling interest;

(12) Is a legal resident of another state, licensed pursuant to section 375.017 or 375.126, which other state does not allow legal residents of Missouri to obtain a license to act as an agent or broker and to transact the business of solicitation of, negotiation for, or procurement or making of, insurance or annuity contracts;

(13) Owned or operated an insurance business in this state if the agent, broker or agency knew, or should have known, that the result was, or was likely to have been, an illegal placement of insurance with an unauthorized "multiple employer self-insured health plan" as that term is defined in section 376.1000, RSMo, or the subsequent servicing of an insurance policy illegally placed with an unauthorized multiple employer self-insured health plan.

2. The director may refuse to issue any license to any insurance agent, agency or broker if he or she determines that the licensee or applicant has, at any time, or if an insurance agency, the officers, owners or managers thereof have violated any of the provisions set out in subsection 1 of this section.

3. Every agent or broker licensed in this state shall notify the director, in writing, within thirty days, of any change in his or her residence address, and any agency licensed in this state shall notify the director, in writing, within thirty days, of any change in its business address. If the failure to notify the director of such change in address results in an inability to serve an agent, broker or agency with a complaint as provided by sections 621.045 to 621.198, RSMo, then the director may immediately revoke the license of said agent, broker or agency until such time as service may be obtained.**] for any one or more of the following causes:**

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

(4) Improperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony or crime involving moral turpitude;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) Signing the name of another to an application for insurance or to any document related to an insurance transaction without authorization;

(11) Improperly using notes or any other reference material to complete an examination for an insurance license;

(12) Knowingly acting as an insurance producer when not licensed or accepting insurance business from an individual knowing that person is not licensed;

(13) Failing to comply with an administrative or court order imposing a child support obligation; or

(14) Failing to comply with any administrative or court order directing payment of state or federal income tax.

2. In the event that the action by the director is not to renew or to deny an application for a license, the director shall notify the applicant or licensee in writing and advise the applicant or licensee of the reason for the denial or nonrenewal. Appeal of the

nonrenewal or denial of the application for a license shall be made pursuant to the provisions of chapter 621, RSMo.

3. The license of a business entity licensed as an insurance producer may be suspended, revoked, renewal refused or an application may be refused if the director finds that a violation by an individual insurance producer was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the director nor corrective action taken.

4. The director may also revoke or suspend **[**under**]** **pursuant to** subsection 1 of this section any license issued by the director where the licensee has failed to renew or has surrendered such license.

5. Every insurance producer licensed in this state shall notify the director of any change of address, on forms prescribed by the director, within thirty days of the change. If the failure to notify the director of the change of address results in an inability to serve the insurance producer with a complaint as provided by sections 621.045 to 621.198, RSMo, then the director may immediately revoke the license of the insurance producer until such time as service may be obtained.

6. An insurance producer shall report to the director any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order or other relevant legal documents.

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

375.158. INSURER SHALL COMPLY WITH ALL INSURANCE LAWS BEFORE DOING BUSINESS — COMMISSIONS PAID, TO WHOM. — 1. No insurer shall engage in the business of insurance in this state without first complying with all the provisions of the laws of this state governing the business of insurance.

2. No insurer organized or incorporated under the laws of this state shall undertake any business or risk except as provided by those laws. No insurer organized or incorporated by or under the laws of this state or any other state of the United States or any foreign government, transacting the business of life insurance, shall be permitted or allowed to take any other kind of risks except those connected with or pertaining to making assurance on the life of a human being and the granting, purchasing and disposing of annuities and endowments, and the making of insurance against accident and sickness to persons by life or health or life and health insurers as provided in sections 376.010 and 376.309, RSMo.

3. No insurer doing business in this state shall pay any commission or other compensation to any person or entity for any services, as **[**agent**]** **insurance producer**, in obtaining in this state any contract of insurance except to a licensed **[**and appointed agent**]** **insurance producer** of the insurer**[**,**]** **and** a licensed **[**and appointed**]** **business entity** insurance **[**agency with a copy of its current agency license on file with the insurer; or a licensed broker having a copy of the agency's or broker's current license on file with the insurer**]** **producer**.

379.356. EXCESSIVE PREMIUMS AND REBATES PROHIBITED. — No insurer**[**, broker or agent**]** **or insurance producer** shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the provisions of section 379.017 and sections 379.316 to 379.361. No insurer or employee thereof, and no **[**broker or agent**]** **insurance producer** shall pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium

named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in applicable filings. No insured named in any policy of insurance shall knowingly receive or accept, directly or indirectly, any **[**such**]** rebate, discount, abatement, credit or reduction of premium, or any **[**such**]** special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of, nor permitting the regulation of the payment of, commissions or other compensation to duly licensed **[**agents and brokers**]** **insurance producers**; nor as prohibiting, or permitting the regulation of, any insurer from allowing or returning to its participating policyholders or members, dividends or savings.

384.043. LICENSING REQUIREMENTS FOR SURPLUS LINES BROKERS, FEE — BOND — EXAMINATION, EXCEPTION — RENEWAL, WHEN, VIOLATION, EFFECT. — 1. No agent or broker **[**licensed by the state**]** shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the director.

2. The director shall issue a surplus lines license to any qualified **[**resident**]** holder of a current **resident or nonresident** property and casualty **[**broker's**]** license but only when the **[**broker**]** **licensee** has:

(1) Remitted the one hundred dollar initial fee to the director;

(2) Submitted a completed license application on a form supplied by the director;

(3) Passed a qualifying examination approved by the director, except that all holders of a license prior to July 1, 1987, shall be deemed to have passed such an examination; and

(4) Filed with the director, and maintains during the term of the license, in force and unimpaired, a bond in favor of this state in the penal sum of **[**ten**]** **one hundred** thousand dollars **or in a sum equal to the tax liability for the previous tax year, whichever is smaller**, aggregate liability, with corporate sureties approved by the director. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of sections 384.011 to 384.071 and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least thirty days' prior written notice is given to the licensee and director. **[**If the director determines that a surplus lines licensee of a reciprocal sister state is competent and trustworthy, then he may, in his discretion, issue a nonresident surplus lines agent's license. A nonresident licensee shall be limited in his authority to servicing of business negotiated elsewhere and filing any appropriate taxes. A nonresident licensee shall not solicit business.**]**

3. Each surplus lines license shall be renewed annually on the anniversary date of issuance and continue in effect until refused, revoked or suspended by the director in accordance with section 384.065; except that if the annual renewal fee for the license is not paid on or before the anniversary date the license terminates. The annual renewal fee is fifty dollars.

[375.021. AGENT'S LICENSE, WHEN TERMINATED — PROCEDURE. — A license issued to an agent shall authorize him to act as agent until such time as the license is terminated, suspended or revoked. Upon the termination, suspension or revocation of the license, the agent or any person having possession of the license shall immediately return same to the director and the director shall notify the agent and all companies appointing the agent by letter that the license is terminated, suspended or revoked. If at any time an agent has been without an appointment by a company for a period of two years, the director shall send the agent notice that the license will terminate within thirty working days except that if such agent has complied with the provisions of section 375.020 and has paid all licensing and other fees required by law, such agent's license shall not be so terminated. The agent may request a hearing before the director within thirty working days of notice of termination. Any insurance agent, broker or insurance agency holding a valid license on January 1, 1982, will not be required to take an examination

or pay a fee for said license. In addition, no insurance company is required to appoint any agent which is designated on the records of the department of insurance as representing said company as of January 1, 1982.**]**

[375.027. TEMPORARY LICENSE FOR APPLICANT. — A nonrenewable temporary license may be issued for a period not to exceed ninety days in cases where an applicant has theretofore filed a completed application for a license, has secured a company appointment, has paid the applicable fees and where the director is satisfied as to the applicant's business reputation.**]**

[375.061. AGENCY MUST BE LICENSED, REQUIREMENTS, FEE — RENEWAL, FEE — VIOLATION, PENALTY. — 1. No insurance agency shall act as an agency in this state unless it is licensed by the director as provided in this chapter.

2. Before any insurance agency license shall be issued, there shall be on file in the office of the director the following documents and information:

(1) An application such as may be prescribed by the director showing the name of the agency, business address or addresses of the agency, whether the agency is a partnership, unincorporated association or corporation; if a partnership or unincorporated association, the name and residence of each and every person or corporation having an interest in or owning any part of the agency; if a corporation, the names and addresses of the officers and directors of the corporation;

(2) A list of all insurance agents or brokers employed or acting in behalf of or through the agency and to whom the agency pays any salary or commission for the solicitation of or negotiation for any insurance contract.

3. Within twenty working days after the change of any information submitted on the application, or upon termination of any agency, the agency shall notify the director of the change or termination. The notification is to be filed without charge.

4. Upon receipt of an application and the payment of a fee of one hundred dollars, the director, if satisfied that the agency has complied with the provisions herein provided, shall issue a license which shall continue until suspended or revoked or the agency is terminated by operation of law.

5. Each insurance agency shall be responsible for renewing its agency license biennially on the anniversary date of the original licensing or the agency license shall terminate. The fee for renewal shall be one hundred dollars. The department of insurance shall assess a late fee for any insurance agency which fails to renew its agency license within thirty days of the renewal date, at the rate of twenty-five dollars per month.

6. Notwithstanding any other provision, nothing herein shall prohibit any insurance company from paying a commission or other remuneration to a duly licensed insurance agency.

7. It shall be unlawful for an insurance agency to solicit, negotiate for or produce contracts of insurance except through duly licensed insurance agents or brokers.

8. Any owner, officer, manager or director willfully violating any provision of this section is guilty of a class A misdemeanor and upon conviction therefor, if the offender holds a broker's or agent's license, the court imposing sentence shall order the director of the department of insurance to revoke such license.**]**

[375.081. EXAMINATION — HELD WHEN — TESTING SERVICE AUTHORIZED — ISSUANCE OF LICENSE — RULES AND REGULATIONS. — 1. If satisfied that the applicant meets the requirements of sections 375.018 and 375.091, the director shall subject the applicant to a written examination as to his or her competence to act as broker for any kind or kinds of insurance, or subdivision thereof, for which he or she wishes to be licensed. Such examinations shall be held at such times and places as the director shall from time to time determine. The director may, at his or her discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the director, and examination

fees charged by such service shall be paid by the applicant. An examination fee represents an administrative expense and is not refundable.

2. If the director is satisfied as to the qualifications of the applicant, he or she shall issue a license limited to the kind, or kinds, of insurance, or any subdivision thereof, for which the applicant is qualified.

3. Each applicant shall be advised of the result of his or her examination within twenty working days after the date of the examination.

4. The director may establish reasonable rules and regulations with respect to the scope, type, and conduct of uniform examinations and the times and places where they shall be held. The rules and regulations may require a reasonable waiting period before giving an examination to an applicant who has failed to pass a previous similar examination.**]**

[375.082. WAIVER OF EXAMINATION, WHEN. — The director shall waive the examination for a person applying for a broker's license if such person has had a resident agent's license in more than one line of insurance for at least five years immediately preceding the time of application for a broker's license and is a resident of the state of Missouri at the time of application.**]**

[375.086. BROKER'S EXAMINATION NOT REQUIRED OF CERTAIN PERSONS. — No examination shall be required of:

(1) An applicant for the same kind of license as that which he holds in this state as of January 1, 1982; or

(2) An applicant for the same kind of license as that which he has held in another state within one year next preceding the date of his application and which he secured by passing a written examination; and provided that the applicant is a legal resident of this state at the time of his application and is otherwise deemed by the director to be fully qualified and competent.**]**

[375.091. BROKER'S LICENSE, ISSUED TO WHOM. — Any license required by this chapter shall be issued to any person who is at least eighteen years of age, a citizen of the United States, and who is trustworthy and competent to act, and intends to hold himself out in good faith as an insurance broker, and the license is not sought principally for the purpose of soliciting, negotiating or procuring insurance contracts covering himself or his spouse or insurance on property owned by the applicant.**]**

[375.096. BROKER'S LICENSE, BIENNIAL RENEWAL, FEE — NONRESIDENT BROKER TO COMPLETE CONTINUING EDUCATION REQUIREMENTS — REINSTATEMENT REQUIREMENTS. — 1. The biennial renewal fee for a broker's license is one hundred dollars for each license. A broker's license shall be renewed biennially on the anniversary date of issuance and continue in effect until refused, revoked, or suspended by the director in accordance with section 375.141; except that if the biennial renewal fee for the license is not paid within ninety days after the biennial anniversary date or if the broker has not complied with section 375.020 if applicable within ninety days after the biennial anniversary date, the license terminates as of ninety days after the biennial anniversary date.

2. Any nonresident broker who has not complied with the provisions of section 375.020 may not reapply for a broker's license until that broker has taken the continuing education courses required under section 375.020.

3. A broker whose license terminated for nonpayment of the biennial renewal fee or noncompliance with section 375.020 may apply for a new broker's license because of such nonpayment or noncompliance, except that such broker must comply with all provisions of sections 375.076, 375.082, 375.086, and 375.091 regarding issuance of a new license if such license was terminated for noncompliance with section 375.020, or shall pay a late fee at the rate of twenty-five dollars per month or fraction thereof after the biennial anniversary date if such

license was terminated for nonpayment of the renewal fee, except that nothing in this subsection shall require the director to relicense any broker determined to have violated the provisions of subsection 1 of section 375.141.**]**

[375.101. TEMPORARY BROKER'S LICENSE ISSUED, WHEN. — The director shall, if requested, issue a broker's temporary license without requiring the applicant to pass a written examination in the following circumstances:

(1) To the surviving spouse or next of kin or to the personal representative of a deceased licensed broker or to the spouse, next of kin, employee or conservator of a licensed broker becoming disabled because of sickness, mental or physical disability or injury, if in the director's opinion the temporary license is necessary for the continuation of the business of the broker thereby affected. The license shall be issued for a term not exceeding six months and the director may in his discretion renew the license for an additional term of six months, thus not exceeding in the aggregate twelve months;

(2) To the appointee of a licensed broker who enters upon active service in the armed forces of the United States, for such period of time as in the opinion of the director may be necessary for the continuation of the business of the broker thereby affected.**]**

[375.121. FUNDS COLLECTED BY BROKER TO BE KEPT SEPARATE. — Every insurance broker acting as such in this state shall be responsible in a fiduciary capacity for all funds received or collected as an insurance broker, and shall not, without the express consent of his principal, mingle any such funds with his own funds or with funds held by him in any other capacity. Nothing herein contained requires any broker to maintain a separate bank deposit for the funds of each principal, if and as long as the funds so held for each principal are reasonably ascertainable from the books of account and records of the broker.**]**

[375.142. CHANGE OF ANNIVERSARY DATE, WHEN. — For a broker or agent licensed pursuant to this chapter, the director of the department of insurance may change such broker's or agent's anniversary date of issuance one time to coincide with the anniversary date for that broker's or agent's license.**]**

SECTION B. EFFECTIVE DATE. — The repeal of sections 375.021, 375.027, 375.061, 375.081, 375.082, 375.086, 375.091, 375.096, 375.101, 375.121 and 375.142, the repeal and reenactment of sections 375.012, 375.014, 375.016, 375.017, 375.018, 375.019, 375.020, 375.022, 375.025, 375.031, 375.033, 375.035, 375.037, 375.039, 375.046, 375.051, 375.065, 375.071, 375.076, 375.106, 375.116, 375.136, 375.141, 375.158 and 379.356 and the enactment of section 375.015 of this act shall become effective January 1, 2003.

Approved July 12, 2001

SB 197 [SCS SB 197]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Expands the grant of immunity for the donation of certain fire equipment.

AN ACT to repeal section 320.091, RSMo 2000, relating to fire protection, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
320.091. Donation of used personal protection equipment and clothing, immunity from liability, when, conditions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 320.091, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 320.091, to read as follows:

320.091. DONATION OF USED PERSONAL PROTECTION EQUIPMENT AND CLOTHING, IMMUNITY FROM LIABILITY, WHEN, CONDITIONS. — There shall be no cause of action against any fire protection district, volunteer fire protection association**,** or any fire department of any political subdivision which donates **[**used personal protection**]** equipment **[**and**] used to suppress fire or** fire protection clothing to another department, association or district if **the following conditions are met:**

(1) Such equipment is approved by the state fire marshal or **[**his**] the state fire marshal's** designee**;**

(2) Motor vehicles so donated must pass a safety inspection by the Missouri state highway patrol;

(3) The receiving agency demonstrates to the state fire marshal's office that the equipment received works properly; and

(4) The donor agency informs the receiving agency in writing of any defects in the equipment about which it knows.

This immunity shall apply only to causes of action directly related to the equipment mentioned **[**herein**] in this section**.

Approved July 2, 2001

SB 200 [SB 200]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Creates Women Offender Program in the Department of Corrections.

AN ACT to repeal section 217.015, RSMo 2000, relating to the department of corrections, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
217.015. Divisions created — sections authorized — purpose of department — women offender program established, purpose — advisory committee established, membership, purpose.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 217.015, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 217.015, to read as follows:

217.015. DIVISIONS CREATED — SECTIONS AUTHORIZED — PURPOSE OF DEPARTMENT — WOMEN OFFENDER PROGRAM ESTABLISHED, PURPOSE — ADVISORY COMMITTEE ESTABLISHED, MEMBERSHIP, PURPOSE. — 1. The department shall supervise and manage all correctional centers, and probation and parole of the state of Missouri.

2. The department shall be composed of the following divisions:
(1) The division of human services;
(2) The division of adult institutions;
(3) The board of probation and parole; and
(4) The division of offender rehabilitative services.
3. Each division may be subdivided by the director into such sections, bureaus, or offices as is necessary to carry out the duties assigned by law.

4. The department shall operate a women offender program to be supervised by a director of women's programs. The purpose of the women offender program shall be to ensure that female offenders are provided a continuum of supervision strategies and program services reflecting best practices for female probationers, prisoners and parolees in areas including but not limited to classification, diagnostic processes, facilities, medical and mental health care, child custody and visitation.

5. There shall be an advisory committee under the direction of the director of women's programs. The members of the committee shall include the director of the office of women's health, the director of the department of mental health or designee and four others appointed by the director of the department of corrections. The committee shall address the needs of women in the criminal justice system as they are affected by the changes in their community, family concerns, the judicial system and the organization and available resources of the department of corrections.

Approved July 12, 2001

SB 201 [SB 201]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Requires Governor to declare February as Missouri Lifelong Learning Month.

AN ACT to amend chapter 9, RSMo, by adding thereto one new section relating to Missouri lifelong learning month.

SECTION
A. Enacting clause.
9.140. Missouri Lifelong Learning Month observed, when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 9, RSMo, is amended by adding thereto one new section, to be known as section 9.140, to read as follows:

9.140. MISSOURI LIFELONG LEARNING MONTH OBSERVED, WHEN. — The governor shall annually issue a proclamation making the month of February "Missouri Lifelong Learning Month", and recommending that it be observed by the people with appropriate activities in the public schools and otherwise to promote public awareness of the importance of ongoing education throughout each person's lifetime.

Approved June 27, 2001

SB 203 [SB 203]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Exempts food from the sales tax imposed by the Metropolitan Park and Recreation District.

AN ACT to repeal section 32.085, RSMo 2000, relating to the sales tax imposed by the metropolitan park and recreation system, and to enact in lieu thereof two new sections relating to the same subject.

SECTION
A. Enacting clause.
32.085. Local sales taxes, collection of — definitions.
67.1713. No sales tax on food for counties in metropolitan park and recreation districts, when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 32.085, RSMo 2000, is repealed and two new sections enacted in lieu thereof, to be known as sections 32.085 and 67.1713, to read as follows:

32.085. LOCAL SALES TAXES, COLLECTION OF — DEFINITIONS. — The following words or phrases as used in this section and section 32.087 shall have the following meaning unless a different meaning clearly appears from the context:

(1) "Boat" shall only include motorboats and vessels as the terms "motorboat" and "vessel" are defined in section 306.010, RSMo;

(2) "Farm machinery" means new or used farm tractors, cultivating and harvesting equipment which ordinarily is attached thereto, combines, cornpickers, cottonpickers, farm trailers, and such other new or used farm equipment or machinery which are used exclusively for agricultural purposes as the director of revenue may exempt by rule or regulation of the department of revenue;

(3) "Local sales tax" shall mean any tax levied, assessed, or payable under the local sales tax law;

(4) "Local sales tax law" shall refer specifically to sections 66.600 to 66.630,RSMo, sections 67.391 to 67.395, RSMo, sections 67.500 to 67.545, RSMo, section 67.547, RSMo, section 67.548, RSMo, sections 67.550 to 67.570, RSMo, section 67.581, RSMo, section 67.582, RSMo, section 67.583, RSMo, sections 67.590 to 67.594, RSMo, sections 67.700 to 67.727, RSMo, section 67.729, RSMo, sections 67.730 to 67.739, RSMo, section 67.782, RSMo, **sections 67.1712 to 67.1715, RSMo,** sections 92.400 to 92.421, RSMo, sections 94.500 to 94.550, RSMo, section 94.577, RSMo, sections 94.600 to 94.655, RSMo, and sections 94.700 to 94.755, RSMo, and any provision of law hereafter enacted authorizing the imposition of a sales tax by a political subdivision of this state; provided that such sales tax applies to all transactions which are subject to the taxes imposed under the provisions of sections 144.010 to 144.525, RSMo;

(5) "Taxing entity" shall refer specifically to any political subdivision of this state which is authorized by the local sales tax law to impose one or more local sales taxes.

67.1713. NO SALES TAX ON FOOD FOR COUNTIES IN METROPOLITAN PARK AND RECREATION DISTRICTS, WHEN. — Beginning January 1, 2002, there is hereby specifically exempted from the tax imposed pursuant to section 67.1712, all sales of food as defined by section 144.014, RSMo.

Approved June 29, 2001

SB 223 [SB 223]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Clarifies procedure for court instructions regarding lesser included offenses.

AN ACT to repeal section 556.046, RSMo 2000, relating to criminal procedure, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
556.046. Conviction of included offenses — jury instructions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 556.046, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 556.046, to read as follows:

556.046. CONVICTION OF INCLUDED OFFENSES — JURY INSTRUCTIONS. — 1. A defendant may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when**:**

(1) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(2) It is specifically denominated by statute as a lesser degree of the offense charged; or

(3) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein.

2. The court shall not be obligated to charge the jury with respect to an included offense unless there is a basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense. **An offense is charged for purposes of this section if:**

(1) It is in an indictment or information; or

(2) It is an offense submitted to the jury because there is a basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense.

3. The court shall be obligated to instruct the jury with respect to a particular included offense only if there is a basis in the evidence for acquitting the defendant of the immediately higher included offense and there is a basis in the evidence for convicting the defendant of that particular included offense.

Approved July 6, 2001

SB 224 [SB 224]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes law enforcement districts in Camden County.

AN ACT to amend chapter 67, RSMo, by adding thereto twenty new sections relating to law enforcement districts, with an emergency clause.

SECTION
A. Enacting clause.
67.1860. Title.

67.1862. Definitions.
67.1864. District created in certain counties.
67.1866. Vote required to create district — petition, contents.
67.1868. Opposition to formation of a district, petition filed, procedure.
67.1870. Costs of filing to be paid by petitioners.
67.1872. Board of directors, members.
67.1874. Notice of district organization — election of board members, terms.
67.1876. Powers of the board, meetings, corporate seal, quorum.
67.1878. Use of funds, sources of funding.
67.1880. Property tax imposed, when — ballot language — collection of tax.
67.1882. Contracting, borrowing and agreement authority of the district.
67.1884. Limitation on district's contracting authority.
67.1886. Additional powers of the district.
67.1888. Insurance obtained by the district, types, conditions.
67.1890. Change in district boundaries, procedure.
67.1892. Vote required for change in boundaries, when.
67.1894. Termination of taxing authority by petition, procedure.
67.1896. Vote required for termination of taxing authority, when — ballot language.
67.1898. Dissolution of a district, procedure.
B. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 67, RSMo, is amended by adding thereto twenty new sections, to be known as sections 67.1860, 67.1862, 67.1864, 67.1866, 67.1868, 67.1870, 67.1872, 67.1874, 67.1876, 67.1878, 67.1880, 67.1882, 67.1884, 67.1886, 67.1888, 67.1890, 67.1892, 67.1894, 67.1896 and 67.1898, to read as follows:

67.1860. TITLE. — Sections 67.1860 to 67.1898 shall be known as the "Missouri Law Enforcement District Act".

67.1862. DEFINITIONS. — As used in sections 67.1860 to 67.1898, the following terms mean:

(1) "Approval of the required majority" or "direct voter approval", a simple majority;

(2) "Board", the board of directors of a district;

(3) "District", a law enforcement district organized pursuant to sections 67.1860 to 67.1898.

67.1864. DISTRICT CREATED IN CERTAIN COUNTIES. — 1. A district may be created to fund, promote, plan, design, construct, improve, maintain and operate one or more projects relating to law enforcement or to assist in such activity.

2. A district is a political subdivision of the state.

3. A district may be created in any county of the first classification without a charter form of government and a population of fifty thousand inhabitants or less.

67.1866. VOTE REQUIRED TO CREATE DISTRICT — PETITION, CONTENTS. — 1. Whenever the creation of a district is desired, ten percent of the registered voters within the proposed district may file a petition requesting the creation of a district. The petition shall be filed in the circuit court of the county in which the proposed district is located.

2. The proposed district area shall be contiguous and may contain any portion of one or more municipalities.

3. The petition shall set forth:

(1) The name and address of each owner of real property located within the proposed district or who is a registered voter resident within the proposed district;

(2) A specific description of the proposed district boundaries including a map illustrating such boundaries;

(3) A general description of the purpose or purposes for which the district is being formed; and

(4) The name of the proposed district.

4. In the event any owner of real property within the proposed district who is named in the petition or any legal voter resident within the district shall not join in the petition or file an entry of appearance and waiver of service of process in the case, a copy of the petition shall be served upon said owner or legal voter in the manner provided by supreme court rule for the service of petitions generally. Any objections to the petition shall be raised by answer within the time provided by supreme court rule for the filing of an answer to a petition.

67.1868. OPPOSITION TO FORMATION OF A DISTRICT, PETITION FILED, PROCEDURE. — 1. Any owner of real property within the proposed district and any legal voter who is a resident within the proposed district may join in or file a petition supporting or answer opposing the creation of the district and seeking a judgment respecting these same issues.

2. The court shall hear the case without a jury. If the court determines the petition is defective or the proposed district or its plan of operation is unconstitutional, it shall enter its judgment to that effect and shall refuse to incorporate the district as requested in the pleadings. If the court determines the petition is not legally defective and the proposed district and plan of operation are not unconstitutional, the court shall determine and declare the district organized and incorporated and shall approve the plan of operation stated in the petition.

3. Any party having filed a petition or answer to a petition may appeal the circuit court's order or judgment in the same manner as provided for other appeals. Any order either refusing to incorporate the district or incorporating the district shall be a final judgment for purposes of appeal.

67.1870. COSTS OF FILING TO BE PAID BY PETITIONERS. — The costs of filing and defending the petition and all publication and incidental costs incurred in obtaining circuit court certification of the petition for voter approval shall be paid by the petitioners. If a district is organized pursuant to sections 67.1860 to 67.1898, the petitioners may be reimbursed for such costs out of the revenues received by the district.

67.1872. BOARD OF DIRECTORS, MEMBERS. — A district created pursuant to sections 67.1860 to 67.1898 shall be governed by a board of directors consisting of five members to be elected as provided in section 67.1874.

67.1874. NOTICE OF DISTRICT ORGANIZATION — ELECTION OF BOARD MEMBERS, TERMS. — 1. Within thirty days after the order declaring the district organized has become final, the circuit clerk of the county in which the petition was filed shall give notice by causing publication to be made once a week for two consecutive weeks in a newspaper of general circulation in the county, the last publication of which shall be at least ten days before the day of the meeting required by this section, to call a meeting of the owners of real property and registered voters resident within the district at a day and hour specified in a public place in the county in which the petition was filed for the purpose of electing a board of five directors, two to serve one year, two to serve two years, and one to serve three years, to be composed of residents of the district.

2. The attendees, when assembled, shall organize by the election of a chairman and secretary of the meeting who shall conduct the election.

3. Each director shall serve for a term of three years and until such director's successor is duly elected and qualified. Successor directors shall be elected in the same manner as the initial directors at a meeting of the residents called by the board. Each

successor director shall serve a three-year term. The remaining directors shall have the authority to elect an interim director to complete any unexpired term of a director caused by resignation or disqualification.

4. Directors shall be at least twenty-one years of age.

67.1876. POWERS OF THE BOARD, MEETINGS, CORPORATE SEAL, QUORUM. — 1. The board shall possess and exercise all of the district's legislative and executive powers.

2. Within thirty days after the election of the initial directors, the board shall meet. At its first meeting and after each election of new board members the board shall elect a chairman, a secretary, a treasurer and such other officers as it deems necessary from its members. A director may fill more than one office, except that a director may not fill both the office of chairman and secretary.

3. The board may employ such employees as it deems necessary; provided, however, that the board shall not employ any employee who is related within the third degree by blood or marriage to a member of the board.

4. At the first meeting, the board, by resolution, shall define the first and subsequent fiscal years of the district, and shall adopt a corporate seal.

5. A simple majority of the board shall constitute a quorum. If a quorum exists, a majority of those voting shall have the authority to act in the name of the board, and approve any board resolution.

6. Each director shall devote such time to the duties of the office as their faithful discharge may require and may be reimbursed for such director's actual expenditures in the performance of such director's duties on behalf of the district.

67.1878. USE OF FUNDS, SOURCES OF FUNDING. — A district may receive and use funds for the purposes of planning, designing, constructing, reconstructing, maintaining and operating one or more projects relating to law enforcement. Such funds may be derived from any funding method which is authorized by sections 67.1860 to 67.1898 and from any other source, including but not limited to funds from federal sources, the state of Missouri or an agency of the state, a political subdivision of the state or private sources.

67.1880. PROPERTY TAX IMPOSED, WHEN — BALLOT LANGUAGE — COLLECTION OF TAX. — 1. If approved by at least four-sevenths of the qualified voters voting on the question in the district, the district may impose a property tax in an amount not to exceed the annual rate of thirty cents on the hundred dollars assessed valuation. The district board may levy a property tax rate lower than its approved tax rate ceiling and may increase that lowered tax rate to a level not exceeding the tax rate ceiling without voter approval. The property tax shall be uniform throughout the district.

2. The ballot of submission shall be substantially in the following form:

Shall the ..... Law Enforcement District impose a property tax upon all real and tangible personal property within the district at a rate of not more than ..... (insert amount) cents per hundred dollars assessed valuation for the purpose of providing revenue for the development of a project (or projects) in the district (insert general description of the project or projects, if necessary)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "YES". If you are opposed to the question, place an "X" in the box opposite "NO".

3. The county collector of each county in which the district is partially or entirely located shall collect the property taxes and special benefit assessments made upon all real property and tangible personal property within that county and the district, in the same manner as other property taxes are collected.

4. Every county collector having collected or received district property taxes shall, on or before the fifteenth day of each month and after deducting his or her commissions, remit to the treasurer of that district the amount collected or received by him or her prior to the first day of the month. Upon receipt of such money, the district treasurer shall execute a receipt therefor, which he or she shall forward or deliver to the collector. The district treasurer shall deposit such sums into the district treasury, credited to the appropriate project or purpose. The collector and district treasurer shall make final settlement of the district account and commissions owing, not less than once each year, if necessary.

67.1882. CONTRACTING, BORROWING AND AGREEMENT AUTHORITY OF THE DISTRICT. — 1. A district may contract and incur obligations appropriate to accomplish its purposes.

2. A district may enter into any lease or lease-purchase agreement for or with respect to any real or personal property necessary or convenient for its purposes.

3. A district may borrow money for its purposes at such rates of interest as the district may determine.

4. A district may enter into labor agreements, establish all bid conditions, decide all contract awards, pay all contractors and generally supervise the operation of the district.

67.1884. LIMITATION ON DISTRICT'S CONTRACTING AUTHORITY. — The district may contract with a federal agency, a state or its agencies and political subdivisions, a corporation, partnership or individual regarding funding, promotion, planning, designing, constructing, improving, maintaining, or operating a project or to assist in such activity; provided, however, that any contract providing for the overall management and operation of the district shall only be with a governmental entity or a not for profit corporation.

67.1886. ADDITIONAL POWERS OF THE DISTRICT. — In addition to all other powers granted by sections 67.1860 to 67.1898 the district shall have the following general powers:

(1) To contract with the local sheriff's department for the provision of services;

(2) To sue and be sued in its own name, and to receive service of process, which shall be served upon the district secretary;

(3) To fix compensation of its employees and contractors;

(4) To purchase any personal property necessary or convenient for its activities;

(5) To collect and disburse funds for its activities; and

(6) To exercise such other implied powers necessary or convenient for the district to accomplish its purposes which are not inconsistent with its express powers.

67.1888. INSURANCE OBTAINED BY THE DISTRICT, TYPES, CONDITIONS. — 1. The district may obtain such insurance as it deems appropriate, considering its legal limits of liability, to protect itself, its officers and its employees from any potential liability and may also obtain such other types of insurance as it deems necessary to protect against loss of its real or personal property of any kind. The cost of this insurance shall be charged against the project.

2. The district may also require contractors performing construction or maintenance work on the project and companies providing operational and management services to obtain liability insurance having the district, its directors and employees as additional named insureds.

3. The district shall not attempt to self-insure for its potential liabilities unless it finds that it has sufficient funds available to cover any anticipated judgments or settlements and still complete its project without interruption. The district may self-insure if it is unable to

obtain liability insurance coverage at a rate which is economically feasible to the district, considering its resources.

67.1890. CHANGE IN DISTRICT BOUNDARIES, PROCEDURE. — 1. The boundaries of any district organized pursuant to sections 67.1860 to 67.1898 may be changed in the manner prescribed in this section; but any change of boundaries of the district shall not impair or affect its organization or its rights in or to property, or any of its rights or privileges whatsoever; nor shall it affect or impair or discharge any contract, obligation, lien or charge for or upon which it might be liable or chargeable had any change of boundaries not been made.

2. The boundaries may be changed as follows:

(1) Twenty-five percent of the number of voters who voted in the most recent gubernatorial election in the area to be annexed or deannexed may file with the board a petition in writing praying that such real property be included within, or removed from, the district. The petition shall describe the property to be included in, or removed from, the district and shall describe the property owned by the petitioners and shall be deemed to give assent of the petitioners to the inclusion in, or removal from, the district of the property described in the petition. Such petition shall be in substantially the form set forth for petitions in chapter 116, RSMo; provided that, in the event that there are more than twenty-five property owners or taxpaying electors signing the petition, it shall be deemed sufficient description of their property in the petition as required in this section to list the addresses of such property; or

(2) All of the owners of any territory or tract of land near or adjacent to a district in the case of annexation, or all of the owners of any territory or tract of land within a district in the case of deannexation, who own all of the real estate in such territory or tract of land may file a petition with the board praying that such real property be included in, or removed from, the district. The petition shall describe the property owned by the petitioners and shall be deemed to give assent of the petitioners to the inclusion in, or removal from, the district of the property described in the petition.

3. The secretary of the board shall cause notice of the filing of any petition filed pursuant to this section to be given and published in the county in which the property is located, which notice shall recite the filing of such petition, the number of petitioners, a general description of the boundaries of the area proposed to be included or removed and the prayer of the petitioners; giving notice to all persons interested to appear at the office of the board at the time named in the notice and show cause in writing, if any they have, why the petition should not be granted. The board shall at the time and place mentioned, or at such time or times to which the hearing may be adjourned, proceed to hear the petition and all objections thereto presented in writing by any person showing cause why the petition should not be granted. The failure of any person interested to show cause in writing why such petition shall not be granted shall be deemed as an assent on his or her part to the inclusion of such lands in, or removal of such lands from, the district as prayed for in the petition.

4. If the board deems it for the best interest of the district, it shall grant the petition, but if the board determines in the case of annexation that some portion of the property mentioned in the petition cannot as a practical matter be served by the district, or if it deems in the case of annexation that it is in the best interest of the district that some portion of the property in the petition not be included in the district, or if in the case of deannexation it deems that it is impracticable for any portion of the property to be deannexed from the district, then the board shall grant the petition in part only. If the petition is granted, the board shall make an order to that effect and file the petition with the circuit clerk. Upon the order of the court having jurisdiction over the district, the property shall be included in, or removed from, the district. If the petition contains the

signatures of all the owners of the property pursuant to the provisions of subdivision (2) of subsection 2 of this section, the property shall be included in, or removed from, the district upon the order of the court. If the petition contains the signatures of twenty-five percent of the number of voters who voted in the most recent gubernatorial election in the area to be annexed or deannexed pursuant to subdivision (1) of subsection 2 of this section, the property shall be included in, or removed from, the district subject to the election provided in section 67.1892. The circuit court having jurisdiction over the district shall proceed to make any such order including such additional property within the district, or removing such property from the district, as is provided in the order of the board, unless the court shall find that such order of the board was not authorized by law or that such order of the board was not supported by competent and substantial evidence.

5. Any person aggrieved by any decision of the board made pursuant to the provisions of this section may appeal that decision to the circuit court of the county in which the property is located within thirty days of the decision by the board.

67.1892. VOTE REQUIRED FOR CHANGE IN BOUNDARIES, WHEN. — 1. If the petition to add or remove any territory or tract of land to the district contained fewer than all of the signatures required pursuant to subdivision (2) of subsection 2 of section 67.1890, the decree of extension or retraction of boundaries shall not become final and conclusive until it has been submitted to an election of the voters residing within the boundaries described in such decree and until it has been assented to by a majority vote of the voters in the newly included area, or the area to be removed, voting on the question. The decree shall also provide for the holding of the election to vote on the proposition of extending or retracting the boundaries of the district, and shall fix the date for holding the election.

2. The question shall be submitted in substantially the following form:

Shall the boundaries of the ..... Law Enforcement District be (extended to include/retracted to remove) the following described property? (Describe property)

[ ] YES [ ] NO

3. If a majority of the voters voting on the proposition vote in favor of the extension or retraction of the boundaries of the district, then the court shall enter its further order declaring the decree of extension or retraction of the boundaries to be final and conclusive. In the event, however, that the court finds that a majority of the voters voting thereon voted against the proposition to extend or retract the boundaries of the district, then the court shall enter its further order declaring the decree of extension or retraction of boundaries to be void and of no effect.

67.1894. TERMINATION OF TAXING AUTHORITY BY PETITION, PROCEDURE. — 1. The authority of the district to levy any property tax levied pursuant to section 67.1880 may be terminated by a petition of the voters in the district in the manner prescribed in this section.

2. The petition for termination of authority to tax may be changed as follows:

(1) Twenty-five percent of the number of voters who voted in the most recent gubernatorial election in the district may file with the board a petition in writing praying that the district's authority to impose a property tax be terminated. The petition shall specifically state that the district's authority to impose any property tax, whether or not such a tax is being imposed at the time such petition is filed, shall be terminated. Such petition shall be in substantially the form set forth for petitions in chapter 116, RSMo; or

(2) All of the owners of real estate in the district may file a petition with the board praying that the district's authority to impose a property tax be terminated. The petition shall specifically state that the district's authority to impose any property tax, whether or not such a tax is being imposed at the time such petition is filed, shall be terminated. Such petition shall be in substantially the form set forth for petitions in chapter 116, RSMo.

The petition shall describe the property owned by the petitioners and shall be deemed to give assent of the petitioners to the petition.

3. The secretary of the board shall cause notice of the filing of any petition filed pursuant to this section to be given and published in the county in which the property is located, which notice shall recite the filing of such petition, the number of petitioners and the prayer of the petitioners; giving notice to all persons interested to appear at the office of the board at the time named in the notice and show cause in writing, if any they have, why the petition should not be granted. The board shall at the time and place mentioned, or at such time or times to which the hearing may be adjourned, proceed to hear the petition and all objections thereto presented in writing by any person showing cause why the petition should not be granted.

4. If the board deems it for the best interest of the district, it shall grant the petition. If the petition is granted, the board shall make an order to that effect and file the petition with the circuit clerk. If the petition contains the signatures of all the owners of the property pursuant to the provisions of subdivision (2) of subsection 2 of this section, the authority to tax shall be terminated upon the order of the court. If the petition contains the signatures of twenty-five percent of the number of voters who voted in the most recent gubernatorial election in the district pursuant to subdivision (1) of subsection 2 of this section, the authority to tax shall be terminated subject to the election provided in section 67.1896. The circuit court having jurisdiction over the district shall proceed to make any such order terminating such taxation authority as is provided in the order of the board, unless the court shall find that such order of the board was not authorized by law or that such order of the board was not supported by competent and substantial evidence.

5. Any person aggrieved by any decision of the board made pursuant to the provisions of this section may appeal that decision to the circuit court of the county in which the property is located within thirty days of the decision by the board.

67.1896. VOTE REQUIRED FOR TERMINATION OF TAXING AUTHORITY, WHEN — BALLOT LANGUAGE. — 1. If the petition filed pursuant to section 67.1894 contained fewer than all of the signatures required pursuant to subdivision (2) of subsection 2 of section 67.1894, the termination of taxation authority shall not become final and conclusive until it has been submitted to an election of the voters residing within the district and until it has been assented to by at least four-sevenths of the voters in the district voting on the question. The decree shall also provide for the holding of the election to vote on the proposition, and shall fix the date for holding the election.

2. The question shall be submitted in substantially the following form:

Shall the authority of the ..... Law Enforcement District to adopt property taxes be terminated?

[ ] YES [ ] NO

3. If four-sevenths of the voters voting on the proposition vote in favor of such termination, then the court shall enter its further order declaring the termination of such authority, and all such taxes that are being assessed in the current calendar year pursuant to such authority, to be final and conclusive. In the event, however, that the court finds that less than four-sevenths of the voters voting thereon voted against the proposition to terminate such authority, then the court shall enter its further order declaring the decree of termination of such district's taxing authority to be void and of no effect.

67.1898. DISSOLUTION OF A DISTRICT, PROCEDURE. — 1. Whenever a petition signed by not less than ten percent of the registered voters in any district organized pursuant to sections 67.1860 to 67.1898 is filed with the circuit court having jurisdiction over the district, setting forth all the relevant facts pertaining to the district, and alleging that the further operation of the district is not in the best interests of the inhabitants of the district,

and that the district should, in the interest of the public welfare and safety, be dissolved, the circuit court shall have authority, after hearing evidence submitted on such question, to order a submission of the question, after having caused publication of notice of a hearing on such petition in the same manner as the notice required in section 67.1874, in substantially the following form:

Shall ..... (Insert the name of the law enforcement district) Law Enforcement District be dissolved?

[ ] YES [ ] NO

2. If the court shall find that it is to the best interest of the inhabitants of the district that such district be dissolved, it shall make an order reciting such finding and providing for the submission of the proposition to dissolve such district to a vote of the voters of the district, setting forth such further details in its order as may be necessary to an orderly conduct of such election. Such election shall be held at the municipal election. Returns of the election shall be certified to the court. If the court finds that a majority of the voters voting thereon shall have voted in favor of the proposition to dissolve the district, the court shall make a final order dissolving the district, and the decree shall contain a proviso that the district shall continue in full force for the purpose of paying all outstanding and lawful obligations and disposing of property of the district; but no additional costs or obligations shall be created except such as are necessary to pay such costs, obligations and liabilities previously incurred, or necessary to the winding up of the district. If the court shall find that a majority of the voters of the district voting thereon shall not have voted favorably on the proposition to dissolve such district, then the court shall make a final order declaring such result dismissing the petition praying for the dissolution of said district; and the district shall continue to operate in the same manner as though the petition asking for such dissolution has not been filed.

3. The dissolution of a district shall not invalidate or affect any right accruing to such district, or to any person, or invalidate or affect any contract or indebtedness entered into or imposed upon such district or person; and whenever the circuit court shall, pursuant to this section, dissolve a district, the court shall appoint some competent person to act as trustee for the district so dissolved and such trustee before entering upon the discharge of his or her duties shall take and subscribe an oath that he or she will faithfully discharge the duties of the office, and shall give bond with sufficient security, to be approved by the court to the use of such dissolved district, for the faithful discharge of his or her duties, and shall proceed to liquidate the district under orders of the court, including the levying of any taxes provided for in sections 67.1860 to 67.1898.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to guarantee adequate law enforcement protection for certain citizens of this state, sections 67.1860 to 67.1898 are deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and are hereby declared to be an emergency act within the meaning of the constitution, and sections 67.1860 to 67.1898 shall be in full force and effect upon their passage and approval.

Approved May 16, 2001

SB 227 [HCS SB 227]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Beneficiary designations made on or after August 28, 1989, shall be presumed resolved upon divorce.

AN ACT to repeal section 461.073, RSMo 2000, relating to nonprobate transfers, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
461.073. Scope and application of law.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 461.073, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 461.073, to read as follows:

461.073. SCOPE AND APPLICATION OF LAW. — 1. Subject to the provisions of section 461.079, sections 461.003 to 461.081 apply to a nonprobate transfer on death if at the time the owner designated the beneficiary:

(1) The owner was a resident of this state;

(2) The obligation to pay or deliver arose in this state or the property was situated in this state; or

(3) The transferring entity was a resident of this state or had a place of business in this state or the obligation to make the transfer was accepted in this state.

2. The direction for a nonprobate transfer on death of the owner and the obligation to execute the nonprobate transfer remain subject to the provisions of sections 461.003 to 461.081 despite a subsequent change in the beneficiary, in the rules of the transferring entity under which the transfer is to be executed, in the residence of the owner, in the residence or place of business of the transferring entity or in the location of the property.

3. Sections 461.003 to 461.045 and 461.059 to 461.065 do not apply to accounts or deposits in financial institutions unless the provisions of sections 461.003 to 461.081 are incorporated into the certificate, account or deposit agreement in whole or in part by express reference.

4. Sections 461.003 to 461.081 apply to transfer on death directions given to a personal custodian under the Missouri personal custodian law to the extent that they do not conflict with section 404.560, RSMo.

5. Sections 461.003 to 461.045 and 461.059 to 461.065 do not apply to certificates of ownership or title issued by the director of revenue.

6. Sections 461.003 to 461.045**, 461.051** and 461.059 to 461.081 do not apply to property, money or benefits paid or transferred at death pursuant to a life or accidental death insurance policy, annuity, contract, plan or other product sold or issued by a life insurance company unless the provisions of sections 461.003 to 461.081 are incorporated into the policy or beneficiary designation in whole or in part by express reference.

7. Sections 461.003 to 461.045 and 461.059 to 461.065 do not apply to any nonprobate transfer where the governing instrument or law expressly provides that the nonprobate transfers law of Missouri shall not apply.

8. Section 461.051 shall not apply to any employee benefit plan governed by 29 U.S.C. Section 1001 et seq.

Approved July 10, 2001

SB 234 [SCS SB 234]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Expands the sales tax exemption for telecommunication services.

AN ACT to repeal section 144.010, RSMo 2000, relating to sales tax on telecommunication services, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
144.010. Definitions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 144.010, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 144.010, to read as follows:

144.010. DEFINITIONS. — 1. The following words, terms, and phrases when used in sections 144.010 to 144.525 have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(1) "Admission" includes seats and tables, reserved or otherwise, and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to 144.525;

(2) "Business" includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.525. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the total amount of the gross receipts from such sales, exclusive of receipts from the sale of tangible personal property by persons which property is sold in the course of the partial or complete liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand dollars in any calendar year. The provisions of this subdivision shall not be construed to make any sale of property which is exempt from sales tax or use tax on June 1, 1977, subject to that tax thereafter;

(3) "Gross receipts", except as provided in section 144.012, means the total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise; except that, the term "gross receipts" shall not include the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. In determining any tax due under sections 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the sale price above mentioned shall be deemed to be the amount received. It shall also include the lease or rental consideration where the right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale were made and considered as a sale of such article, and the tax shall be computed and paid by the lessee upon the rentals paid;

(4) "Livestock", cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich and emu, aquatic products as defined in section 277.024, RSMo, elk documented as obtained from a legal source and not from the wild, goats, horses, other equine, or rabbits raised in confinement for human consumption;

(5) "Motor vehicle leasing company" shall be a company obtaining a permit from the director of revenue to operate as a motor vehicle leasing company. Not all persons renting or leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to

obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section 144.070, as hereinafter provided;

(6) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, except the state transportation department, estate, trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number;

(7) "Purchaser" means a person who purchases tangible personal property or to whom are rendered services, receipts from which are taxable under sections 144.010 to 144.525;

(8) "Research or experimentation activities", are the development of an experimental or pilot model, plant process, formula, invention or similar property, and the improvement of existing property of such type. Research or experimentation activities do not include activities such as ordinary testing or inspection of materials or products for quality control, efficiency surveys, advertising promotions or research in connection with literary, historical or similar projects;

(9) "Sale" or "sales" includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for valuable consideration and the rendering, furnishing or selling for a valuable consideration any of the substances, things and services herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

(10) "Sale at retail" means any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists, optometrists and veterinarians and used in the practice of their professions shall be deemed to be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts, computer output or microfilm or microfiche and computer-assisted photo compositions to a purchaser to enable the purchaser to obtain for his or her own use the desired information contained in such computer printouts, computer output on microfilm or microfiche and computer-assisted photo compositions shall be considered as the sale of a service and not as the sale of tangible personal property. Where necessary to conform to the context of sections 144.010 to 144.525 and the tax imposed thereby, the term "sale at retail" shall be construed to embrace:

(a) Sales of admission tickets, cash admissions, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events;

(b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(c) Sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations, and the sale, rental or leasing of all equipment or services pertaining or incidental thereto;

(d) Sales of service for transmission of messages by telegraph companies;

(e) Sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist camp, tourist cabin, or other place in which rooms, meals or drinks are regularly served to the public;

(f) Sales of tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane, and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in the transportation of persons for hire;

(11) "Seller" means a person selling or furnishing tangible personal property or rendering services, on the receipts from which a tax is imposed pursuant to section 144.020;

(12) The noun "tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require;

(13) "Telecommunications service", for the purpose of chapter 144, the transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include the following if such services are separately stated on the customer's bill **or on records of the seller maintained in the ordinary course of business**:

(a) Access to the Internet, access to interactive computer services or electronic publishing services, except the amount paid for the telecommunications service used to provide such access;

(b) Answering services and one-way paging services;

(c) Private mobile radio services which are not two-way commercial mobile radio services such as wireless telephone, personal communications services or enhanced specialized mobile radio services as defined pursuant to federal law; or

(d) Cable or satellite television or music services; and

(14) "Product which is intended to be sold ultimately for final use or consumption" means tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other provisions of law pertaining to sales or use taxes which incorporate the provisions of sections 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning given it in section 700.010, RSMo.

3. Sections 144.010 to 144.525 may be known and quoted as the "Sales Tax Law".

Approved July 12, 2001

SB 236 [CCS#2 HS HCS SCS SB 236]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Adds first cousins to the list of relatives eligible for adoption subsidies.

AN ACT to repeal sections 208.028, 208.029, 208.040, 453.005, 453.072 and 453.170, RSMo 2000, relating to children and families, and to enact in lieu thereof nine new sections relating to the same subject.

SECTION

A. Enacting clause.
208.040. Temporary assistance benefits — eligibility for — assignment of rights to support to state, when, effect of.
208.146. Continuation of medical assistance for employed disabled persons, when, criteria — premiums collected, when.
208.819. Transition to independence grants created, eligibility, amount — information and training developed.
453.005. Construction of sections 453.010 to 453.400 — ethnic and racial diversity considerations.
453.072. Qualified relatives to receive subsidies, when.
453.170. Adoption under laws of other states or countries, requirements, effect.

453.320. Definitions.
453.325. Grandparents as foster parents program established — eligibility requirements — services provided.
1. Child care provided on elementary and secondary school property must comply with child care licensure provisions.
208.028. Definitions.
208.029. Grandparents as foster parents program established — eligibility — program requirements.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 208.028, 208.029, 208.040, 453.005, 453.072 and 453.170, RSMo 2000, are repealed and nine new sections enacted in lieu thereof, to be known as sections 208.040, 208.146, 208.819, 453.005, 453.072, 453.170, 453.320, 453.325 and 1, to read as follows:

208.040. TEMPORARY ASSISTANCE BENEFITS — ELIGIBILITY FOR — ASSIGNMENT OF RIGHTS TO SUPPORT TO STATE, WHEN, EFFECT OF. — 1. Temporary assistance benefits shall be granted on behalf of a dependent child or children and may be granted to the parents or other needy eligible relative caring for a dependent child or children who:

(1) Is under the age of eighteen years; or is under the age of nineteen years and a full-time student in a secondary school (or at the equivalent level of vocational or technical training), if before the child attains the age of nineteen the child may reasonably be expected to complete the program of the secondary school (or vocational or technical training);

(2) Has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew or niece, in a place of residence maintained by one or more of such relatives as the child's own home, and financial aid for such child is necessary to save the child from neglect and to secure for the child proper care in such home. Physical or mental incapacity shall be certified to by competent medical or other appropriate authority designated by the division of family services, and such certificate is hereby declared to be competent evidence in any proceedings concerning the eligibility of such claimant to receive aid to families with dependent children benefits. Benefits may be granted and continued for this reason only while it is the judgment of the division of family services that a physical or mental defect, illness or disability exists which prevents the parent from performing any gainful work;

(3) Is not receiving supplemental aid to the blind, blind pension, supplemental payments, or aid or public relief as an unemployable person;

(4) Is a resident of the state of Missouri.

2. The division of family services shall require as additional conditions of eligibility for benefits that each applicant for or recipient of aid:

(1) Shall furnish to the division the applicant or recipient's Social Security number or numbers, if the applicant or recipient has more than one such number;

(2) Shall assign to the division of family services in behalf of the state any rights to support from any other person such applicant may have in the applicant's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid. An application for benefits made under this section shall constitute an assignment of support rights which shall take effect, by operation of law, upon a determination that the applicant is eligible for assistance under this section. The assignment is effective as to both current and accrued support obligations and authorizes the division of child support enforcement of the department of social services to bring any administrative or judicial action to establish or enforce a current support obligation, to collect support arrearages accrued under an existing order for support, or to seek reimbursement of support provided by the division;

(3) Shall cooperate with the divisions of family services and of child support enforcement unless the division of family services determines in accordance with federally prescribed

standards that such cooperation is contrary to the best interests of the child on whose behalf aid is claimed or to the caretaker of such child, in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child. The divisions of family services and of child support enforcement shall impose all penalties allowed pursuant to federal participation requirements;

(4) Shall cooperate with the department of social services in identifying and providing information to assist the state in pursuing any third party who may be liable to pay for care and services available under the state's plan for medical assistance as provided in section 208.152, unless such individual has good cause for refusing to cooperate as determined by the department of social services in accordance with federally prescribed standards; and

(5) Shall participate in any program designed to reduce the recipient's dependence on welfare, if requested to do so by the department of social services.

3. The division shall require as a condition of eligibility for temporary assistance benefits that a minor child under the age of eighteen who has never married and who has a dependent child in his or her care, or who is pregnant and otherwise eligible for temporary assistance benefits, shall reside in a place of residence maintained by a parent, legal guardian, or other adult relative or in some other adult-supervised supportive living arrangement, as required by Section 403 of P.L. 100-485. Exceptions to the requirements of this subsection shall be allowed in accordance with requirements of the federal Family Support Act of 1988 in any of the following circumstances:

(1) The individual has no parent or legal guardian who is living or the whereabouts of the individual's parent or legal guardian is unknown; or

(2) The division of family services determines that the physical health or safety of the individual or the child of the individual would be jeopardized; or

(3) The individual has lived apart from any parent or legal guardian for a period of at least one year prior to the birth of the child or applying for benefits; or

(4) The individual claims to be or to have been the victim of abuse while residing in the home where she would be required to reside and the case has been referred to the child abuse hotline and a "reason to suspect finding" has been made. Households where the individual resides with a parent, legal guardian or other adult relative or in some other adult-supervised supportive living arrangement shall, subject to federal waiver to retain full federal financial participation and appropriation, have earned income disregarded from eligibility determinations up to one hundred percent of the federal poverty level.

4. If the relative with whom a child is living is found to be ineligible because of refusal to cooperate as required in subdivision (3) of subsection 2 of this section, any aid for which such child is eligible will be paid in the manner provided in subsection 2 of section 208.180, without regard to subsections 1 and 2 of this section.

5. The department of social services may implement policies designed to reduce a family's dependence on welfare. The department of social services is authorized to implement these policies by rule promulgated pursuant to section 660.017, RSMo, and chapter 536, RSMo, including the following:

(1) The department shall increase the earned income and resource disregards allowed recipients to help families achieve a gradual transition to self-sufficiency, including implementing policies to simplify employment-related eligibility standards by increasing the earned income disregard to two-thirds by October 1, 1999. The expanded earned income disregard shall apply only to recipients of cash assistance who obtain employment but not to new applicants for cash assistance who are already working. Once the individual has received the two-thirds disregard for twelve months, the individual would not be eligible for the two-thirds disregard until the individual has not received temporary assistance benefits for twelve consecutive months. The

department shall promulgate rules pursuant to chapter 536, RSMo, to implement the expanded earned income disregard provisions;

(2) **The department shall permit a recipient's enrollment in educational programs beyond secondary education to qualify as a work activity for purposes of receipt of temporary assistance for needy families. Such education beyond secondary education shall qualify as a work activity if such recipient is attending and according to the standards of the institution and the division of family services, making satisfactory progress towards completion of a postsecondary or vocational program. Weekly classroom time and allowable study time shall be applied toward the recipient's weekly work requirement. Such recipient shall be subject to the sixty-month lifetime limit for receipt of temporary assistance for needy families unless otherwise excluded by rule of the division of family services;**

(3) Beginning January 1, 2002, and every two years thereafter, the department of social services shall make a detailed report and a presentation on the temporary assistance for needy families program to the house appropriations for social services committee and the house social services, Medicaid and the elderly committee, and the senate aging, families and mental health committee, or comparable committees;

(4) Other policies designed to reduce a family's dependence on welfare may include supplementing wages for recipients for the lesser of forty-eight months or the length of the recipient's employment by diverting the temporary assistance grant.

The provisions of this subsection shall be subject to compliance by the department with all applicable federal laws and rules regarding temporary assistance for needy families.

6. The work history requirements and definition of "unemployed" shall not apply to any parents in order for these parents to be eligible for assistance pursuant to section 208.041.

7. The department shall continue to apply uniform standards of eligibility and benefits, excepting pilot projects, in all political subdivisions of the state.

8. Consistent with federal law, the department shall establish income and resource eligibility requirements that are no more restrictive than its July 16, 1996, income and resource eligibility requirements in determining eligibility for temporary assistance benefits.

208.146. CONTINUATION OF MEDICAL ASSISTANCE FOR EMPLOYED DISABLED PERSONS, WHEN, CRITERIA — PREMIUMS COLLECTED, WHEN. — 1. Pursuant to the federal Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) (Public Law 106-170), the medical assistance provided for in section 208.151 may be paid for a person who is employed and who:

(1) Meets the definition of disabled under the supplemental security income program or meets the definition of an employed individual with a medically improved disability under TWWIIA;

(2) Meets the asset limits in subsection 2 of this section; and

(3) Has a gross income of two hundred fifty percent or less of the federal poverty guidelines. For purposes of this subdivision, "income" does not include any income of the person's spouse up to one hundred thousand dollars or children. Individuals with incomes in excess of one hundred fifty percent of the federal poverty level shall pay a premium for participation in accordance with subsection 5 of this section.

2. For purposes of determining eligibility pursuant to this section, a person's assets shall not include:

(1) Any spousal assets up to one hundred thousand dollars, one-half of any marital assets and all assets excluded pursuant to section 208.010;

(2) Retirement accounts, including individual accounts, 401(k) plans, 403(b) plans, Keogh plans and pension plans;

(3) Medical expense accounts set up through the person's employer;

(4) Family development accounts established pursuant to sections 208.750 to 208.775; or

(5) PASS plans.

3. A person who is otherwise eligible for medical assistance pursuant to this section shall not lose his or her eligibility if such person maintains an independent living development account. For purposes of this section, an "independent living development account" means an account established and maintained to provide savings for transportation, housing, home modification, and personal care services and assistive devices associated with such person's disability. Independent living development accounts and retirement accounts pursuant to subdivision (2) of subsection 2 of this section shall be limited to deposits of earned income and earnings on such deposits made by the eligible individual while participating in the program and shall not be considered an asset for purposes of determining and maintaining eligibility pursuant to section 208.151 until such person reaches the age of sixty-five.

4. If an eligible individual's employer offers employer-sponsored health insurance and the department of social services determines that it is more cost effective, the individual shall participate in the employer-sponsored insurance. The department shall pay such individual's portion of the premiums, co-payments and any other costs associated with participation in the employer-sponsored health insurance.

5. Any person whose income exceeds one hundred fifty percent of the federal poverty level shall pay a premium for participation in the medical assistance provided in this section. The premium shall be:

(1) For a person whose income is between one hundred fifty-one and one hundred seventy-five percent of the federal poverty level, four percent of income at one hundred sixty-three percent of the federal poverty level;

(2) For a person whose income is between one hundred seventy-six and two hundred percent of the federal poverty level, five percent of income at one hundred eighty-eight percent of the federal poverty level;

(3) For a person whose income is between two hundred one and two hundred twenty-five percent of the federal poverty level, six percent of income at two hundred thirteen percent of the federal poverty level;

(4) For a person whose income is between two hundred twenty-six and two hundred fifty percent of the federal poverty level, seven percent of income at two hundred thirty-eight percent of the federal poverty level.

6. If the department elects to pay employer-sponsored insurance pursuant to subsection 4 of this section then the medical assistance established by this section shall be provided to an eligible person as a secondary or supplemental policy to any employer-sponsored benefits which may be available to such person.

7. The department of social services shall submit the appropriate documentation to the federal government for approval which allows the resources listed in subdivisions (1) to (5) of subsection 2 of this section and subsection 3 of this section to be exempt for purposes of determining eligibility pursuant to this section.

8. The department of social services shall apply for any and all grants which may be available to offset the costs associated with the implementation of this section.

9. The department of social services shall not contract for the collection of premiums pursuant to this chapter. To the best of their ability, the department shall collect premiums through the monthly electronic funds transfer or employer deduction.

10. Recipients of services through this chapter who pay a premium shall do so by electronic funds transfer or employer deduction unless good cause is shown to pay otherwise.

208.819. TRANSITION TO INDEPENDENCE GRANTS CREATED, ELIGIBILITY, AMOUNT — INFORMATION AND TRAINING DEVELOPED. — 1. Persons institutionalized in nursing homes who are Medicaid eligible and who wish to move back into the community shall be eligible for a one-time Missouri transition to independence grant. The Missouri transition to independence grant shall be limited to up to fifteen hundred dollars to offset the initial down payments and setup costs associated with housing a person with disabilities as such person moves out of a nursing home. Such grants shall be established and administered by the division of vocational rehabilitation in consultation with the department of social services. The division of vocational rehabilitation and the department of social services shall cooperate in actively seeking federal and private grant moneys to fund this program; except that, such federal and private grant moneys shall not limit the general assembly's ability to appropriate moneys for the Missouri transition to independence grants.

2. The division of medical services within the department of social services, the department of health and senior services and the division of vocational rehabilitation within the department of elementary and secondary education shall work together to develop information and training on community-based service options for residents transitioning into the community. Representatives of disability-related community organizations shall complete such training before initiating contact with institutionalized individuals.

453.005. CONSTRUCTION OF SECTIONS 453.010 TO 453.400 — ETHNIC AND RACIAL DIVERSITY CONSIDERATIONS. — 1. The provisions of sections 453.005 to 453.400 shall be construed so as to promote the best interests and welfare of the child in recognition of the entitlement of the child to a permanent and stable home.

2. The division of family services and all persons involved in the adoptive placement of children as provided in subdivisions (1), (2) and (4) of section 453.014, shall provide for the diligent recruitment of potential adoptive homes that reflect the ethnic and racial diversity of children in the state for whom adoptive homes are needed.

3. **[**In the selection of an adoptive home, consideration shall be given to both a child's cultural, racial and ethnic background and the capacity of the adoptive parents to meet the needs of a child of a specific background, as one of a number of factors used in determining whether a placement is in the child's best interests. This factor must, however, be applied on an individualized basis, not by general rules.

4.**]** Placement of a child in an adoptive home may not be delayed or denied on the basis of race, color or national origin.

453.072. QUALIFIED RELATIVES TO RECEIVE SUBSIDIES, WHEN. — Any subsidies available to adoptive parents pursuant to section 453.073 and section 453.074 shall also be available to a qualified relative of a child who is granted legal guardianship of the child in the same manner as such subsidies are available for adoptive parents. As used in this section "relative" means any grandparent, aunt, uncle **[**or**],** adult sibling of the child **or adult first cousin of the child**.

453.170. ADOPTION UNDER LAWS OF OTHER STATES OR COUNTRIES, REQUIREMENTS, EFFECT. — 1. When an adoption occurs pursuant to the laws of other states of the United States, Missouri shall, from the date of adoption hold the adopted person to be for every purpose the lawful child of its parent or parents by adoption as fully as though born to them in lawful wedlock, and such adoption shall have the same force and effect as adoption pursuant to the provisions of this chapter, including all inheritance rights.

2. When an adoption occurs in a foreign country and **[**is recognized as a valid adoption by**] the adopted child has migrated to the United States with the permission of** the United States Department of Justice and the United States Department of Immigration and Naturalization

Services, this state shall recognize the adoption. The department of health, upon receipt of proof of adoption as required in subsection 7 of section 193.125, RSMo, shall issue a birth certificate for the adopted child upon request on forms prescribed and furnished by the state registrar pursuant to section 193.125, RSMo.

3. The adoptive parent or parents may petition the court pursuant to this section to request a change of name. The petition shall include a certified copy of the decree of adoption issued by the foreign country and documentation from the United States Department of Justice and the United States Department of Immigration and Naturalization Services which shows the child lawfully entered the United States. The court shall recognize and give effect to the decree of the foreign country and grant a decree of recognition of the adoption and shall change the name of the adopted child to the name given by the adoptive parent, if such a request has been made.

453.320. DEFINITIONS. — As used in this section and section 453.325, the following terms shall mean:

(1) "Division", the division of family services in the department of social services;

(2) "Maintenance of effort", state funds appropriated for the aid to families with dependent children (AFDC), emergency assistance, AFDC-related child care and the JOBS program;

(3) "Temporary assistance for needy families", the federal block grant moneys available to the state for public assistance benefits and programs authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and commonly known as "TANF".

453.325. GRANDPARENTS AS FOSTER PARENTS PROGRAM ESTABLISHED — ELIGIBILITY REQUIREMENTS — SERVICES PROVIDED. — 1. The division of family services in the department of social services shall, subject to appropriations, establish the "Grandparents as Foster Parents Program". The grandparents as foster parents program recognizes that:

(1) Raising a grandchild differs from when the grandparents raised their own children;

(2) Caring for a grandchild often places additional financial, social and psychological strain on grandparents with fixed incomes;

(3) Different parenting skills are necessary when raising a grandchild and many grandparents do not possess such skills, are not aware of how to obtain such skills and cannot afford access to the services necessary to obtain such skills;

(4) Grandparents, like nonrelative foster parents, need a support structure, including counseling for the grandchild and caretaker, respite care and transportation assistance and child care;

(5) The level of care provided by grandparents does not differ from nonrelative foster care, but reimbursement for such care is substantially less for grandparents; and

(6) Grandparents are often unaware of the cash assistance alternatives to the federal TANF block grant funds which are available to support the grandchildren placed in their care.

2. A grandparent shall be eligible to participate in the grandparents as foster parents program if such grandparent:

(1) Is fifty years of age or older;

(2) Is the legal guardian of a grandchild placed in such grandparent's custody;

(3) Has an annual household income of less than two hundred percent of the federal poverty level; and

(4) Participates in the training available through the division pursuant to subsection 4 of this section.

The division shall annually review the eligibility of grandparents participating in the program.

3. If there are no grandparents of a child who are willing to participate in the grandparents as foster parents program, the division may include in the program any other close relative who becomes the legal guardian of the child or obtains legal custody of the child, as granted by a court of competent jurisdiction if such relative also meets the requirements of subdivisions (1), (3) and (4) of subsection 2 of this section.

4. Subject to appropriations, the grandparents as foster parents program:

(1) Shall provide reimbursement up to seventy-five percent of the current foster care payment schedule to eligible grandparents, as defined in subsection 2 of this section, for the care of a grandchild;

(2) Shall establish program requirements, including, but not limited to, participation in foster parent training, parenting skills training, childhood immunizations and other similar health screens;

(3) Shall provide continuing counseling for the child and grandparent;

(4) May provide support services, including, but not limited to, respite care, child care and transportation assistance. Eligibility for child care services pursuant to this program shall be based on the same eligibility criteria used for other child care benefits provided by the division of family services;

(5) Shall provide Medicaid services to such child;

(6) May provide ancillary services, such as child care, respite care, transportation assistance and clothing allowances, but not direct financial payments to the participants in the program after such participants complete the training required in subdivision (2) of this subsection; and

(7) Shall establish criteria for the reduction in cash benefits received by any grandparent providing care for three or more grandchildren pursuant to the grandparents as foster parents program.

5. Funding for cash benefits and other assistance provided to eligible grandparents shall be made from the state maintenance of effort funds. The provisions of this section shall not be construed to create an entitlement for participants in the program.

6. Grandparents who are either under fifty years of age, or are fifty years of age or older and refuse to participate in the training pursuant to subsection 2 of this section but who meet the requirements of subdivisions (1), (2) and (3) of subsection 2 of this section, may apply to the division for foster care reimbursement and assistance. Such cash and noncash assistance shall be funded through the TANF funds. Any work participation and time limit requirements pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, shall apply to all such persons.

SECTION 1. CHILD CARE PROVIDED ON ELEMENTARY AND SECONDARY SCHOOL PROPERTY MUST COMPLY WITH CHILD CARE LICENSURE PROVISIONS. — Any program licensed by the department of health pursuant to chapter 210, RSMo, providing child care to school age children that is located and operated on elementary or secondary school property shall comply with the child care licensure provisions in chapter 210, RSMo; except that, for safety, health and fire purposes, all buildings and premises for any such programs shall be deemed to be in compliance with the child care licensure provisions in Chapter 210, RSMo.

[208.028. DEFINITIONS. — As used in this section and section 208.029, the following terms shall mean:

(1) "Division", the division of family services in the department of social services;

(2) "Maintenance of effort", state funds appropriated for the aid to families with dependent children (AFDC), emergency assistance, AFDC-related child care and the JOBS program;

(3) "Temporary assistance for needy families", the federal block grant moneys available to the state for public assistance benefits and programs authorized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and commonly known as "TANF".**]**

[208.029. GRANDPARENTS AS FOSTER PARENTS PROGRAM ESTABLISHED — ELIGIBILITY — PROGRAM REQUIREMENTS. — 1. The division of family services in the department of social services shall establish the "Grandparents as Foster Parents Program". The grandparents as foster parents program recognizes that:

(1) Raising a grandchild differs from when the grandparents raised their own children;

(2) Caring for a grandchild often places additional financial, social and psychological strain on grandparents with fixed incomes;

(3) Different parenting skills are necessary when raising a grandchild and many grandparents do not possess such skills, are not aware of how to obtain such skills and cannot afford access to the services necessary to obtain such skills;

(4) Grandparents, like nonrelative foster parents, need a support structure, including counseling for the grandchild and caretaker, respite care and transportation assistance and child care;

(5) The level of care provided by grandparents does not differ from nonrelative foster care, but reimbursement for such care is substantially less for grandparents; and

(6) Grandparents are often unaware of the cash assistance alternatives to the federal TANF block grant funds which are available to support the grandchildren placed in their care.

2. A grandparent shall be eligible to participate in the grandparents as foster parents program if such grandparent:

(1) Is fifty years of age or older;

(2) Is the legal guardian of a grandchild placed in such grandparent's custody; and

(3) Participates in the training available through the division pursuant to subsection 4 of this section.

3. If there are no grandparents of a child who are willing to participate in the grandparents as foster parents program, the division may include in the program any other close relative who becomes the legal guardian of the child or obtains legal custody of the child, as granted by a court of competent jurisdiction if such relative also meets the requirements of subdivisions (1) and (3) of subsection 2 of this section.

4. The grandparents as foster parents program shall:

(1) Provide reimbursement based on the current foster care payment schedule to eligible grandparents, as defined in subsection 2 of this section, for the care of a grandchild;

(2) Establish program requirements, including, but not limited to, participation in foster parent training, parenting skills training, childhood immunizations and other similar health screens;

(3) Provide continuing counseling for the child and grandparent;

(4) Provide support services, including, but not limited to, respite care, child care and transportation assistance;

(5) Provide Medicaid services to such child; and

(6) Provide ancillary services, such as child care, respite, transportation assistance and clothing allowances, but not direct financial payments to the participants in the program after such participants complete the training required in subdivision (2) of this subsection.

5. Funding for cash benefits and other assistance provided to eligible grandparents shall be made from the state maintenance of effort funds.

6. Grandparents who are either under fifty years of age, or are fifty years of age or older and refuse to participate in the training pursuant to subsection 2 of this section, may apply to the division for foster care reimbursement and assistance. Such cash and noncash assistance shall be funded through the TANF funds. Any work participation and time limit requirements

pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, shall apply to all such persons.**]**

Approved July 6, 2001

SB 241 [SCS SB 241]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows mutual insurance companies to notify policyholders via newspaper under certain merger conditions.

AN ACT to repeal section 375.355, RSMo 2000, relating to mergers of insurance companies, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
375.355. Acquisition of control of one company by another, director may authorize, procedure, exceptions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 375.355, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 375.355, to read as follows:

375.355. ACQUISITION OF CONTROL OF ONE COMPANY BY ANOTHER, DIRECTOR MAY AUTHORIZE, PROCEDURE, EXCEPTIONS. — 1. Any insurance company organized under the laws of this state may hereafter, with the approval of the director first obtained,

(1) Organize any subsidiary insurance company in which it shall own and hold not less than a majority of the common stock; or

(2) Acquire **control of another insurance company** by purchase, merger or otherwise **[**and hold not less than a majority of the stock of any other insurance company**]**, regardless of the domicile of any company so organized or acquired, for the purpose of operating any such company under a plan of common control.

2. Whenever any insurance company shall propose under the provisions of this section to acquire **control of another insurance company** by purchase**, merger** or otherwise **[**not less than a majority of the stock of any other insurance company**]** or to dispose of any stock so purchased or so acquired, it shall present its petition to the director setting forth the terms and conditions of the proposed acquisition or disposition and praying for the approval of the acquisition or disposition. The director shall thereupon issue an order of notice, requiring notice to be given, to the policyholders of a mutual company and stockholders of a stock company, of the pendency of the petition, and the time and place at which the same will be heard, by publication of the order of notice in two daily newspapers designated by the director for at least once a week for two weeks before the time appointed for the hearing upon the petition; and any further notice which the director may require shall be given by the petitioners. At the time and place fixed in the notice, or at such time and place as shall be fixed by adjournment, the director shall proceed with the hearing, and may make such examination into the affairs and conditions of the companies as he may deem proper. For the purpose of making the examination, or having the same made, the director may employ the necessary clerical, actuarial, legal, and other assistance. The director of the insurance department of this state shall have the same power to summon and compel the attendance and testimony of witnesses and the production of books and

papers at the hearing as by law granted in examinations of companies. Any policyholder or stockholder of the company or companies may appear before the director and be heard in reference to the petition. The director, if satisfied that the **proposed acquisition or disposition was properly approved after notice as required by the articles and bylaws of the company or companies, and that the** interest of the policyholders of the company or companies is protected, and that no reasonable objection exists as to the acquisition or disposition, and that the acquisition will not tend to substantially lessen competition or create a monopoly, shall approve and authorize the proposed acquisition or disposition. All expenses and costs incident to the proceedings under this subsection shall be paid by the company or companies bringing the petition.

3. The shares of any subsidiary life insurance company acquired or held under the provisions of this section by a parent life insurance company organized under the provisions of chapter 376, RSMo, shall be eligible for deposit by the parent life insurance company as provided in section 376.170, RSMo, at a value no greater than the proportion of the capital and surplus of the subsidiary company as shown by its last annual statement filed in the state of its domicile represented by the shares held by the parent life insurance company, but only to the extent that the capital and surplus is represented by cash or securities of the kind and type eligible for deposit under the provisions of section 376.170, RSMo, and other applicable statutes.

4. (1) The provisions of this section shall not apply to the acquisition or disposition by purchase, sale or otherwise of not less than the majority of the stock of any insurance company domiciled outside of the state of Missouri, if the consideration involved in such acquisition or disposition does not exceed the following threshold:

(a) With respect to an insurance holding company, so long as such consideration does not exceed the lesser of three percent of its consolidated assets or twenty percent of its consolidated stockholders' equity as of the thirty-first day of December of the preceding year according to its consolidated balance sheet prepared in accordance with generally accepted accounting principles and audited by independent certified accountants in accordance with generally acceptable auditing standards; or

(b) With respect to an insurance company organized under the laws of this state, so long as such consideration does not exceed the lesser of three percent of its assets or ten percent of its capital and surplus as of the thirty-first day of December of the preceding year according to its balance sheet prepared in accordance with accounting practices prescribed or permitted by the department of insurance and in conformity with the practices of the National Association of Insurance Commissioners and audited by independent certified accountants in accordance with generally acceptable auditing standards.

(2) In calculating the amount of consideration involved in such acquisition or disposition for the purposes of subdivision (1) of this subsection, there shall be included total net moneys or other consideration expended, and obligations assumed in the acquisition or disposition, including all organizational expenses and contributions to capital and surplus of such insurance company domiciled outside of the state of Missouri, whether represented by the purchase of capital stock or issuance of other securities. For the purposes of this subsection, the term "insurance holding company" means a domestic insurance holding company in which the majority of stock is owned by a domestic insurance company, or a domestic insurance holding company which owns the majority of the stock of a domestic insurance company.

Approved July 10, 2001

SB 244 [CCS HCS SS SB 244]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Suspends a person's driver's license who steals gas from a gas station.

AN ACT to repeal sections 301.260, 302.173, 304.015, 304.035, 304.180, 304.580, 307.173 and 307.375, RSMo 2000, and to enact in lieu thereof thirteen new sections relating to motor vehicles and equipment, with penalty provisions.

SECTION

A. Enacting clause.
226.003. Public rest areas, department of transportation not to contract for the operation of truck stops, fueling stations, convenience stores or restaurants.
301.260. State and municipally owned motor vehicles — public schools and colleges courtesy or driver training vehicles — regulations.
302.173. Driver's examination required, when — exceptions — procedure.
302.286. Theft of motor fuel punishable by suspension of driver's license — reinstatement fee required.
304.015. Drive on right of highway — traffic lanes — signs — violations, penalties.
304.035. Stop required at railroad grade crossing, when — penalty.
304.180. Regulations as to weight — axle load, tandem axle defined.
304.580. Highway construction or work zones defined, motor vehicle moving violations, penalty.
307.173. Specifications for vision-reducing material applied to windshield or windows — violations, penalty — rules, procedure — exception.
307.375. Inspection of school buses — items covered — violations, when corrected, notice to patrol — spot checks authorized.
414.407. EPAct credit banking and selling program established — definitions — biodiesel fuel revolving fund created — rulemaking authority — study on the use of alternative fuels in motor vehicles, contents.
431.181. Payments for the transportation of property to be made within thirty days after delivery, when — warranty repair work, reimbursement, rates.
1. Retro reflective sheeting for school waning signs, grants issued by department to local governments, procedure — rulemaking authority.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 301.260, 302.173, 304.015, 304.035, 304.180, 304.580, 307.173 and 307.375, RSMo 2000, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 226.003, 301.260, 302.173, 302.286, 304.015, 304.035, 304.180, 304.580, 307.173, 307.375, 414.407, 431.181 and 1, to read as follows:

226.003. PUBLIC REST AREAS, DEPARTMENT OF TRANSPORTATION NOT TO CONTRACT FOR THE OPERATION OF TRUCK STOPS, FUELING STATIONS, CONVENIENCE STORES OR RESTAURANTS. — Notwithstanding any other provision of law or rule to the contrary, the department of transportation is hereby prohibited from contracting with private entities or vendors to operate truck stops, fueling stations, convenience stores or restaurants on or near interstate public rest areas. The department shall examine and research the Vermont and Utah state programs, which have phased out interstate public rest areas and instead have implemented a public/private partnership with designated interstate rest exits. Nothing in this section shall prohibit the department from maintaining existing interstate public rest areas or constructing new interstate public rest areas consistent with this section.

301.260. STATE AND MUNICIPALLY OWNED MOTOR VEHICLES — PUBLIC SCHOOLS AND COLLEGES COURTESY OR DRIVER TRAINING VEHICLES — REGULATIONS. — 1. The director of revenue shall issue certificates for all cars owned by the state of Missouri and shall assign to each of such cars two plates bearing the words: "State of Missouri, official car number ....." (with the number inserted thereon), which plates shall be displayed on such cars when they are being used on the highways. No officer or employee or other person shall use such a motor vehicle for other than official use.

2. Motor vehicles used as ambulances, patrol wagons and fire apparatus, owned by any municipality of this state, shall be exempt from all of the provisions of sections 301.010 to

301.440 while being operated within the limits of such municipality, but the municipality may regulate the speed and use of such motor vehicles owned by them; and all other motor vehicles owned by municipalities, counties and other political subdivisions of the state shall be exempt from the provisions of sections 301.010 to 301.440 requiring registration, proof of ownership and display of number plates; provided, however, that there shall be displayed on each side of such motor vehicle, in letters not less than three inches in height with a stroke of not less than three-eighths of an inch wide, the name of such municipality, county or political subdivision, the department thereof, and a distinguishing number. Provided, further, that when any motor vehicle is owned and operated exclusively by any school district and used solely for transportation of school children, the commissioner shall assign to each of such motor vehicles two plates bearing the words "School Bus, State of Missouri, car no. ....." (with the number inserted thereon), which plates shall be displayed on such motor vehicles when they are being used on the highways. No officer, or employee of the municipality, county or subdivision, or any other person shall operate such a motor vehicle unless the same is marked as herein provided, and no officer, employee or other person shall use such a motor vehicle for other than official purposes.

3. For registration purposes only, a public school or college shall be considered the temporary owner of a vehicle acquired from a new motor vehicle franchised dealer which is to be used as a courtesy vehicle or a driver training vehicle. The school or college shall present to the director of revenue a copy of a lease agreement with an option to purchase clause between the authorized new motor vehicle franchised dealer and the school or college and a photo copy of the front of the dealer's vehicle manufacturer's statement of origin, and shall make application for and be granted a nonnegotiable certificate of ownership and be issued the appropriate license plates. Registration plates are not necessary on a driver training vehicle when the motor vehicle is plainly marked as a driver training vehicle while being used for such purpose and such vehicle can also be used in conjunction with the activities of the educational institution.

4. As used in this section, the term "political subdivision" is intended to include any township, road district, sewer district, school district, municipality, town or village, **sheltered workshop, as defined in section 178.900, RSMo,** and any interstate compact agency which operates a public mass transportation system.

302.173. DRIVER'S EXAMINATION REQUIRED, WHEN — EXCEPTIONS — PROCEDURE. — 1. Any applicant for a license, who does not possess a valid license issued pursuant to the laws of this state **or any other state** shall be examined as herein provided. Any person who has failed to renew such person's license on or before the date of its expiration or within six months thereafter must take the complete examination. Any active member of the armed forces, their adult dependents or any active member of the peace corps may apply for a renewal license without examination of any kind, unless otherwise required by sections 302.700 to 302.780, provided the renewal application shows that the previous license had not been suspended or revoked. Any person honorably discharged from the armed forces of the United States who held a valid license prior to being inducted may apply for a renewal license within sixty days after such person's honorable discharge without submitting to any examination of such person's ability to safely operate a motor vehicle over the highways of this state unless otherwise required by sections 302.700 to 302.780, other than the vision test provided in section 302.175, unless the facts set out in the renewal application or record of convictions on the expiring license, or the records of the director show that there is good cause to authorize the director to require the applicant to submit to the complete examination. No applicant for a renewal license shall be required to submit to any examination of his or her ability to safely operate a motor vehicle over the highways of this state unless otherwise required by sections 302.700 to 302.780 or regulations promulgated thereunder, other than a test of the applicant's ability to understand highway signs regulating, warning or directing traffic and the vision test provided in section 302.175, unless the facts set out in the renewal application or record of convictions on the expiring license, or the records of the director show that there is good cause to authorize the

director to require the applicant to submit to the complete examination. The examination shall be made available in each county. Reasonable notice of the time and place of the examination shall be given the applicant by the person or officer designated to conduct it. The complete examination shall include a test of the applicant's natural or corrected vision as prescribed in section 302.175, the applicant's ability to understand highway signs regulating, warning or directing traffic, the applicant's practical knowledge of the traffic laws of this state, and an actual demonstration of ability to exercise due care in the operation of a motor vehicle of the classification for which the license is sought. When an applicant for a license has a valid license from a state which has requirements for issuance of a license comparable to the Missouri requirements, the director may waive the requirement of actual demonstration of ability to exercise due care in the operation of a motor vehicle. If the director has reasonable grounds to believe that an applicant is suffering from some known physical or mental ailment which ordinarily would interfere with the applicant's fitness to operate a motor vehicle safely upon the highways, the director may require that the examination include a physical or mental examination by a licensed physician of the applicant's choice, at the applicant's expense, to determine the fact. The director shall prescribe regulations to ensure uniformity in the examinations and in the grading thereof and shall prescribe and furnish all forms to the members of the highway patrol and to other persons authorized to conduct examinations as may be necessary to enable the officer or person to properly conduct the examination. The records of the examination shall be forwarded to the director who shall not issue any license hereunder if in the director's opinion the applicant is not qualified to operate a motor vehicle safely upon the highways of this state.

2. The director of revenue shall delegate the power to conduct the examinations required for a license or permit to any member of the highway patrol or any person employed by the highway patrol. The powers delegated to any examiner may be revoked at any time by the director of revenue upon notice.

3. Notwithstanding the requirements of subsections 1 and 2 of this section, the successful completion of a motorcycle rider training course approved pursuant to sections 302.133 to 302.138 shall constitute an actual demonstration of the person's ability to exercise due care in the operation of a motorcycle or motortricycle, and no further driving test shall be required to obtain a motorcycle or motortricycle license or endorsement.

302.286. THEFT OF MOTOR FUEL PUNISHABLE BY SUSPENSION OF DRIVER'S LICENSE — REINSTATEMENT FEE REQUIRED. — 1. No person shall drive a motor vehicle so as to cause it to leave the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of such motor vehicle unless payment or authorized charge for motor fuel dispensed has been made. A person found guilty or pleading guilty to stealing pursuant to section 570.030, RSMo, for the theft of motor fuel as described in this section shall have his or her driver's license suspended by the court, beginning on the date of the court's order of conviction.

2. The person shall submit all of his or her operator's and chauffeur's licenses to the court upon conviction and the court shall forward all such driver's licenses and the order of suspension of driving privileges to the department of revenue for administration of such order.

3. Suspension of a driver's license pursuant to this section shall be made as follows:

(1) For the first offense, suspension shall be for sixty days, provided that persons may apply for hardship licenses pursuant to section 302.309 at any time following the first thirty days of such suspension;

(2) For the second offense, suspension shall be for ninety days, provided that persons may apply for hardship licenses pursuant to section 302.309 at any time following the first sixty days of such suspension; and

(3) For the third or any subsequent offense, suspension shall be for one hundred eighty days, provided that persons may apply for hardship licenses pursuant to section 302.309 at any time following the first ninety days of such suspension.

4. At the expiration of the suspension period, and upon payment of a reinstatement fee of twenty-five dollars, the director shall terminate the suspension and shall return the person's driver's license. The reinstatement fee shall be in addition to any other fees required by law, and shall be deposited in the state treasury to the credit of the state highway department fund, pursuant to section 302.228.

304.015. DRIVE ON RIGHT OF HIGHWAY — TRAFFIC LANES — SIGNS — VIOLATIONS, PENALTIES. — 1. All vehicles not in motion shall be placed with their right side as near the right-hand side of the highway as practicable, except on streets of municipalities where vehicles are obliged to move in one direction only or parking of motor vehicles is regulated by ordinance.

2. Upon all public roads or highways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction pursuant to the rules governing such movement;

(2) When placing a vehicle in position for and when such vehicle is lawfully making a left turn in compliance with the provisions of sections 304.014 to 304.026 or traffic regulations thereunder or of municipalities;

(3) When the right half of a roadway is closed to traffic while under construction or repair;

(4) Upon a roadway designated by local ordinance as a one-way street and marked or signed for one-way traffic.

3. It is unlawful to drive any vehicle upon any highway or road which has been divided into two or more roadways by means of a physical barrier or by means of a dividing section or delineated by curbs, lines or other markings on the roadway, except to the right of such barrier or dividing section, or to make any left turn or semicircular or U-turn on any such divided highway, except **[**in a crossover or**] at an** intersection **or interchange or at any signed location designated by the state highways and transportation commission or the department of transportation. The provisions of this subsection shall not apply to emergency vehicles, law enforcement vehicles or to vehicles owned by the commission or the department**.

4. The authorities in charge of any highway or the state highway patrol may erect signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the highway, and all members of the Missouri highway patrol and other peace officers may direct traffic in conformance with such signs. When authorized signs have been erected designating off-center traffic lanes, no person shall disobey the instructions given by such signs.

5. Whenever any roadway has been divided into three or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;

(2) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane, except when overtaking and passing another vehicle where the roadway ahead is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is sign-posted to give notice of such allocation;

(3) Upon all highways any vehicle proceeding at less than the normal speed of traffic thereon shall be driven in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb, except as otherwise provided in sections 304.014 to 304.026;

(4) Official signs may be erected by the highways and transportation commission or the highway patrol may place temporary signs directing slow moving traffic to use a designated lane

or allocating specified lanes to traffic moving in the same direction and drivers of vehicles shall obey the directions of every such sign;

(5) Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and except when a roadway has been divided into traffic lanes, each driver shall give to the other at least one-half of the main traveled portion of the roadway whenever possible.

6. All vehicles in motion upon a highway having two or more lanes of traffic proceeding in the same direction shall be driven in the right-hand lane except when overtaking and passing another vehicle or when preparing to make a proper left turn or when otherwise directed by traffic markings, signs or signals.

7. Violation of this section shall be deemed an infraction unless such violation causes an immediate threat of an accident, in which case such violation shall be deemed a class C misdemeanor, or unless an accident results from such violation, in which case such violation shall be deemed a class A misdemeanor.

304.035. STOP REQUIRED AT RAILROAD GRADE CROSSING, WHEN — PENALTY. — 1. When any person driving a vehicle approaches a railroad grade crossing, the driver of the vehicle shall operate the vehicle in a manner so he will be able to stop, and he shall stop the vehicle not less than fifteen feet and not more than fifty feet from the nearest rail of the railroad track and shall not proceed until he can safely do so if:

(1) A clearly visible electric or mechanical signal device warns of the approach of a railroad train; or

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal or warning of the approach or passage of a railroad train; or

(3) An approaching railroad train is visible and is in hazardous proximity to such crossing; or

(4) Any other traffic sign, device or any other act, rule, regulation or statute requires a vehicle to stop at a railroad grade crossing.

2. No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing when a train is approaching while such gate or barrier is closed or is being opened or closed.

3. **No person shall drive a vehicle through a railroad crossing when there is not sufficient space to drive completely through the crossing.**

4. No person shall drive a vehicle through a railroad crossing unless such vehicle has sufficient undercarriage clearance necessary to prevent the undercarriage of the vehicle from contacting the railroad crossing.

5. Any person violating the provisions of this section is guilty of a class C misdemeanor.

304.180. REGULATIONS AS TO WEIGHT — AXLE LOAD, TANDEM AXLE DEFINED. — 1. No vehicle or combination of vehicles shall be moved or operated on any **[**primary or interstate**]** highway in this state **[**plus a distance not to exceed ten miles from such highways,**]** having a greater weight than twenty thousand pounds on one axle, no combination of vehicles operated by transporters of general freight over regular routes as defined in section 390.020, RSMo, shall be moved or operated on any highway of this state having a greater weight than the vehicle manufacturer's rating on a steering axle with the maximum weight not to exceed twelve thousand pounds on a steering axle, and no vehicle shall be moved or operated on any **[**primary or interstate highways**] state highway** of this state having a greater weight than thirty-four thousand pounds on any tandem axle; the term "tandem axle" shall mean a group of two or more axles, arranged one behind another, the distance between the extremes of which is more than forty inches and not more than ninety-six inches apart **[**and further provided, however, that when any vehicle or combination of vehicles with six axles which includes a tandem axle group as above defined and a group of three axles which are fully equalized, automatically or mechanically, and the distance between the center of the extremes of which does not exceed one hundred ten

inches, the chief engineer of the Missouri state transportation department shall issue a special permit for the movement thereof, as provided in section 304.200, for twenty thousand pounds for each axle of the tandem axle group and for sixteen thousand pounds for each axle of the group of three fully equalized axles which are equalized, automatically or mechanically, when said vehicle or combination of vehicles is used to transport excavation or construction machinery or equipment, road-building machinery or farm implements over routes in the primary system and other routes that are not a part of the interstate system of highways; provided, further, that the chief engineer of the Missouri state transportation department may issue permits on the interstate system**]**.

2. An "axle load" is defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.

3. Subject to the limit upon the weight imposed upon a **[**primary or interstate**]** highway **of this state** through any one axle or on any tandem axle, the total gross weight with load imposed **[**upon a primary or interstate highway, plus a distance not to exceed ten miles from such highways,**]** by any group of two or more consecutive axles of any vehicle or combination of vehicles shall not exceed the maximum load in pounds as set forth in the following table:

Distance in feet between the extremes of any group of two or more consecutive axles, measured to the nearest foot, except where indicated otherwise	Maximum load in pounds				
feet	2 axles	3 axles	4 axles	5 axles	6 axles
4	34,000				
5	34,000				
6	34,000				
7	34,000				
8	34,000	34,000			
More than 8	38,000	42,000			
9	39,000	42,500			
10	40,000	43,500			
11	40,000	44,000			
12	40,000	45,000	50,000		
13	40,000	45,500	50,500		
14	40,000	46,500	51,500		
15	40,000	47,000	52,000		
16	40,000	48,000	52,500	58,000	
17	40,000	48,500	53,500	58,500	
18	40,000	49,500	54,000	59,000	
19	40,000	50,000	54,500	60,000	
20	40,000	51,000	55,500	60,500	66,000
21	40,000	51,500	56,000	61,000	66,500
22	40,000	52,500	56,500	61,500	67,000
23	40,000	53,000	57,500	62,500	68,000
24	40,000	54,000	58,000	63,000	68,500
25	40,000	54,500	58,500	63,500	69,000
26	40,000	55,500	59,500	64,000	69,500
27	40,000	56,000	60,000	65,000	70,000
28	40,000	57,000	60,500	65,500	71,000

29	40,000	57,500	61,500	66,000	71,500
30	40,000	58,500	62,000	66,500	72,000
31	40,000	59,000	62,500	67,500	72,500
32	40,000	60,000	63,500	68,000	73,000
33	40,000	60,000	64,000	68,500	74,000
34	40,000	60,000	64,500	69,000	74,500
35	40,000	60,000	65,500	70,000	75,000
36		60,000	66,000	70,500	75,500
37		60,000	66,500	71,000	76,000
38		60,000	67,500	72,000	77,000
39		60,000	68,000	72,500	77,500
40		60,000	68,500	73,000	78,000
41		60,000	69,500	73,500	78,500
42		60,000	70,000	74,000	79,000
43		60,000	70,500	75,000	80,000
44		60,000	71,500	75,500	80,000
45		60,000	72,000	76,000	80,000
46		60,000	72,500	76,500	80,000
47		60,000	73,500	77,500	80,000
48		60,000	74,000	78,000	80,000
49		60,000	74,500	78,500	80,000
50		60,000	75,500	79,000	80,000
51		60,000	76,000	80,000	80,000
52		60,000	76,500	80,000	80,000
53		60,000	77,500	80,000	80,000
54		60,000	78,000	80,000	80,000
55		60,000	78,500	80,000	80,000
56		60,000	79,500	80,000	80,000
57		60,000	80,000	80,000	80,000

Notwithstanding the above table, two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each if the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more.

4. **[**Subject to the limit upon the weight imposed upon a supplementary highway through any one axle which shall not have a weight greater than eighteen thousand pounds or on any tandem axle which shall not have a weight greater than thirty-two thousand pounds, the total gross weight with load imposed upon the supplementary highway by any vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of a single motor vehicle or by the first axle of a motor vehicle and the last axle of the last vehicle in any combination of vehicles measured longitudinally to the nearest foot as set forth in the following table:

Distance in feet between the extreme axles	Maximum load in pounds
4	32,000
5	32,000
6	32,000
7	32,000
8	33,200
9	34,400
10	35,600
11	36,800
12	38,000

13	39,200
14	40,400
15	41,600
16	42,800
17	44,000
18	45,200
19	46,400
20	47,600
21	48,800
22	50,000
23	51,000
24	52,000
25	53,000
26	54,000
27	55,000
28	56,000
29	57,000
30	58,000
31	59,000
32	60,000
33	61,100
34	62,200
35	63,500
36	64,600
37	65,900
38	67,100
39	68,300
40	69,700
41	70,800
42	72,000
43 or over	73,280

5. Provided, however, subject to the limit upon the weight imposed through any one axle, through any tandem axle, as provided in subsection 4 of this section, the total gross weight with load imposed upon any bridges generally considered by the state highways and transportation commission to be on the supplementary system or upon any bridges which are under the jurisdiction of and maintained by counties, townships or cities shall not exceed the gross weight given for the respective distance between the first and last axle of the total group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance in feet between the extreme axles	Maximum load In pounds
4	32,000
5	32,000
6	32,000
7	32,000
8	32,610
9	33,580
10	34,550
11	35,510
12	36,470
13	37,420
14	38,360

15	39,300
16	40,230
17	41,160
18	42,080
19	42,990
20	43,900
21	44,800
22	45,700
23	46,590
24	47,470
25	48,350
26	49,220
27	50,090
28	50,950
29	51,800
30	52,650
31	53,490
32	54,330
33	55,160
34	55,980
35	56,800
36	57,610
37	58,420
38	59,220
39	60,010
40	60,800
41	61,580
42	62,360
43	63,130
44	63,890
45 or over	64,650

The state highways and transportation commission, with respect to bridges on the supplementary system, or the person in charge of supervision or maintenance of the bridges on the county, township or city roads and streets may determine and by official order declare that certain designated bridges do not appear susceptible to unreasonable and unusual damage by reason of such higher weight limits and may legally be subjected to the higher limits in this section.**]** **Whenever the state highways and transportation commission finds that any state highway bridge in the state is in such a condition that use of such bridge by vehicles of the weights specified in subsection 3 of this section will endanger the bridge, or the users of the bridge, the commission may establish maximum weight limits and speed limits for vehicles using such bridge. The governing body of any city or county may grant authority by act or ordinance to the state highways and transportation commission to enact the limitations established in this section on those roadways within the purview of such city or county. Notice of the weight limits and speed limits established by the commission shall be given by posting signs at a conspicuous place at each end of any such bridge.**

[6.**]** **5.** Nothing in this section shall be construed as permitting lawful axle loads, tandem axle loads or gross loads in excess of those permitted under the provisions of Section 127 of Title 23 of the United States Code.

[7. Additional routes may be designated by the state highways and transportation commission for movement or operation by vehicles or combinations of vehicles having the weights described in subsections 1 and 3 of this section.

8.**]** **6.** Notwithstanding the weight limitations contained in this section, any vehicle or combination of vehicles operating on highways other than the interstate highway system may exceed single axle, tandem axle and gross weight limitations in an amount not to exceed two thousand pounds. However, total gross weight shall not exceed eighty thousand pounds.

[9.**]** **7.** Notwithstanding any provision of this section to the contrary, the department of transportation shall issue a single-use special permit, or upon request of the owner of the truck or equipment, shall issue an annual permit, for the transporting of any concrete pump truck or well-drillers' equipment. The department of transportation shall set fees for the issuance of permits pursuant to this subsection. Notwithstanding the provisions of section 301.133, RSMo, concrete pump trucks or well-drillers' equipment may be operated on state maintained roads and highways at any time on any day.

304.580. HIGHWAY CONSTRUCTION OR WORK ZONES DEFINED, MOTOR VEHICLE MOVING VIOLATIONS, PENALTY. — 1. As used in this section, the term "construction zone" or "work zone" means any area upon or around any highway as defined in section 302.010, RSMo, which is visibly marked by the department of transportation **or a contractor performing work for the department of transportation** as an area where construction, maintenance, or other work is temporarily occurring. **The term "work zone" or "construction zone" also includes the lanes of highway leading up to the area upon which an activity described in this subsection is being performed, beginning at the point where appropriate signs directing motor vehicles to merge from one lane into another lane are posted.**

2. Upon a conviction or a plea of guilty by any person for a moving violation as defined in section 302.010, RSMo, or any offense listed in section 302.302, RSMo, the court shall assess a fine of thirty-five dollars in addition to any other fine authorized to be imposed by law, if the offense occurred within a construction zone or a work zone.

3. **Upon a conviction or plea of guilty by any person for a speeding violation pursuant to either section 304.009 or 304.010, or a passing violation pursuant to subsection 6 of this section, the court shall assess a fine of two hundred fifty dollars in addition to any other fine authorized by law, if the offense occurred within a construction zone or a work zone and at the time the speeding or passing violation occurred there was any person in such zone who was there to perform duties related to the reason for which the area was designated a construction zone or work zone. However, no person assessed an additional fine pursuant to this subsection shall also be assessed an additional fine pursuant to subsection 2 of this section, and no person shall be assessed an additional fine pursuant to this subsection if no signs have been posted pursuant to subsection 4 of this section.**

4. The penalty authorized by subsection 3 of this section shall only be assessed by the court if the department of transportation or contractor performing work for the department of transportation has erected signs upon or around a construction or work zone which are clearly visible from the highway and which state substantially the following message: "Warning: $250 fine for speeding or passing in this work zone".

5. During any day in which no person is present in a construction zone or work zone established pursuant to subsection 3 of this section to perform duties related to the purpose of the zone, the sign warning of additional penalties shall not be visible to motorists. During any period of two hours or more in which no person is present in such zone on a day in which persons have been or will be present to perform duties related to the reason for which the area was designated as a construction zone or work zone, the sign warning of additional penalties shall not be visible to motorists. The department of transportation or contractor performing work for the department of transportation shall be responsible for compliance with provisions of this subsection. Nothing in this subsection shall prohibit warning or traffic control signs necessary for public safety in the construction or work zone being visible to motorists at all times.

6. The driver of a motor vehicle may not overtake or pass another motor vehicle within a work zone or construction zone. This subsection applies to a construction zone or work zone located upon a highway divided into two or more marked lanes for traffic moving in the same direction and for which motor vehicles are instructed to merge from one lane into another lane by an appropriate sign erected by the department of transportation or a contractor performing work for the department of transportation. Violation of this subsection is a class C misdemeanor.

7. This section shall not be construed to enhance the assessment of court costs or the assessment of points pursuant to section 302.302, RSMo.

307.173. SPECIFICATIONS FOR VISION-REDUCING MATERIAL APPLIED TO WINDSHIELD OR WINDOWS — VIOLATIONS, PENALTY — RULES, PROCEDURE — EXCEPTION. — 1. Except as provided in subsections 2 and 6 of this section, no person shall operate any motor vehicle registered in this state on any public highway or street of this state with any manufactured vision-reducing material applied to any portion of the motor vehicle's windshield, sidewings, or windows located immediately to the left and right of the driver which reduces visibility from within or without the motor vehicle. This section shall not prohibit labels, stickers, decalcomania, or informational signs on motor vehicles or the application of tinted or solar screening material to recreational vehicles as defined in section 700.010, RSMo, provided that such material does not interfere with the driver's normal view of the road. This section shall not prohibit factory installed tinted glass, the equivalent replacement thereof or tinting material applied to the upper portion of the motor vehicle's windshield which is normally tinted by the manufacturer of motor vehicle safety glass.

2. **[**A permit to**] Any person may** operate a motor vehicle with **[**a front sidewing vent or window**] side and rear windows** that **[**has**] have** a sun screening device, in conjunction with safety glazing material, that has a light transmission of thirty-five percent or more plus or minus three percent and a luminous reflectance of thirty-five percent or less plus or minus three percent **[**may be issued by the department of public safety to a person having a physical disorder requiring the use of such vision-reducing material. If, according to the permittee's physician, the physical disorder requires the use of a sun screening device which permits less light transmission and luminous reflectance than allowed under the requirements of this subsection, the limits of this subsection may be altered for that permittee in accordance with the physician's prescription. The director of the department of public safety shall promulgate rules and regulations for the issuance of the permit. The permit shall allow operation of the vehicle by immediate family members who are husband, wife and sons or daughters who reside in the household**]**.

3. A motor vehicle in violation of this section shall not be approved during any motor vehicle safety inspection required pursuant to sections 307.350 to 307.390.

4. **[**No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.**] Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.**

5. Any person who violates the provisions of this section is guilty of a class C misdemeanor.

6. Any vehicle licensed with a historical license plate shall be exempt from the requirements of this section.

307.375. INSPECTION OF SCHOOL BUSES — ITEMS COVERED — VIOLATIONS, WHEN CORRECTED, NOTICE TO PATROL — SPOT CHECKS AUTHORIZED. — 1. The owner of every bus used to transport children to or from school in addition to any other inspection required by law shall submit the vehicle to an official inspection station, and obtain a certificate of inspection, sticker, seal or other device annually, but the inspection of the vehicle shall not be made more than sixty days prior to operating the vehicle during the school year. The inspection shall, in addition to the inspection of the mechanism and equipment required for all motor vehicles under the provisions of sections 307.350 to 307.390, include an inspection to ascertain that the following items are correctly fitted, adjusted, and in good working condition:

(1) All mirrors, including crossview, inside, and outside;

(2) The front and rear warning flashers;

(3) The stop signal arm;

(4) The crossing control arm on public school buses required to have them pursuant to section 304.050, RSMo;

(5) The rear bumper to determine that it is flush with the bus so that hitching of rides cannot occur;

(6) The exhaust tailpipe **[**to determine that it does not protrude from the bus**] shall be flush with or may extend not more than two inches beyond the perimeter of the body or bumper**;

(7) The emergency doors and exits to determine them to be unlocked and easily opened as required;

(8) The lettering and signing on the front, side**[,]** and rear of the bus;

(9) The service door;

(10) The step treads;

(11) The aisle mats or aisle runners;

(12) The emergency equipment which shall include as a minimum, a first aid kit, flares or fuses, and a fire extinguisher;

(13) The seats, including a determination that they are securely fastened to the floor;

(14) The emergency door buzzer;

(15) All hand hold grips;

(16) The interior glazing of the bus.

2. In addition to the inspection required by subsection 1 **of this section**, the Missouri state highway patrol shall conduct an inspection after February first of each school year of all vehicles required to be marked as school buses under section 304.050, RSMo. This inspection shall be conducted by the Missouri highway patrol in cooperation with the department of elementary and secondary education and shall include, as a minimum, items in subsection 1 **of this section** and the following:

(1) The driver seat belts;

(2) The heating and defrosting systems;

(3) The reflectors;

(4) The bus steps;

(5) The aisles.

3. If, upon inspection, conditions which violate the standards in subsection 2 **of this section** are found, the owner or operator shall have them corrected in ten days and notify the superintendent of the Missouri state highway patrol or those persons authorized by the superintendent. If the defects or unsafe conditions found constitute an immediate danger, the bus shall not be used until corrections are made and the superintendent of the Missouri state highway patrol or those persons authorized by the superintendent are notified.

4. The Missouri highway patrol may inspect any school bus at any time and if such inspection reveals a deficiency affecting the safe operation of the bus, the provisions of subsection 3 **of this section** shall be applicable.

414.407. EPACT CREDIT BANKING AND SELLING PROGRAM ESTABLISHED — DEFINITIONS — BIODIESEL FUEL REVOLVING FUND CREATED — RULEMAKING AUTHORITY — STUDY ON THE USE OF ALTERNATIVE FUELS IN MOTOR VEHICLES, CONTENTS. — 1. As used in this section, the following terms mean:

(1) "B-20", a blend of twenty percent by volume biodiesel fuel and eighty percent by volume petroleum-based diesel fuel;

(2) "Biodiesel", fuel as defined in ASTM Standard PS121;

(3) "EPAct", the federal Energy Policy Act, 42 U.S.C. 13201, et seq.;

(4) "EPAct credit", a credit issued pursuant to EPAct;

(5) "Fund", the Biodiesel Fuel Revolving Fund;

(6) "Incremental cost", the difference in cost between biodiesel fuel and conventional petroleum-based diesel fuel at the time the biodiesel fuel is purchased.

2. The department, in cooperation with the department of agriculture, shall establish and administer an EPAct credit banking and selling program to allow state agencies to use moneys generated by the sale of EPAct credits to purchase biodiesel fuel for use in state vehicles. Each state agency shall provide the department with all vehicle fleet information necessary to determine the number of EPAct credits generated by the agency. The department may sell credits in any manner pursuant to the provisions of EPAct.

3. There is hereby created in the state treasury the "Biodiesel Fuel Revolving Fund", into which shall be deposited moneys received from the sale of EPAct credits banked by state agencies on the effective date of this section and in future reporting years, any moneys appropriated to the fund by the General Assembly, and any other moneys obtained or accepted by the department for deposit into the fund. The fund shall be managed to maximize benefits to the state in the purchase of biodiesel fuel and, when possible, to accrue those benefits to state agencies in proportion to the number of EPAct credits generated by each respective agency.

4. Moneys deposited into the fund shall be used to pay for the incremental cost of biodiesel fuel with a minimum biodiesel concentration of B-20 for use in state vehicles and for administration of the fund. Not later than January thirty-first of each year, the department shall submit an annual report to the General Assembly on the expenditures from the fund during the preceding fiscal year.

5. Notwithstanding the provisions of section 33.0080, RSMo, no portion of the fund shall be transferred to the general revenue fund, and any appropriation made to the fund shall not lapse. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Interest and moneys earned on such investments shall be credited to the fund.

6. The department shall promulgate such rules as are necessary to implement this section. No rule or portion of a rule promulgated pursuant to this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

7. The department shall conduct a study of the use of alternative fuels in motor vehicles in the state and shall report its findings and recommendations to the General Assembly no later than January 1, 2002. Such study shall include:

(1) An analysis of the current use of alternative fuels in public and private vehicle fleets in the state;

(2) An assessment of methods that the state may use to increase use of alternative fuels in vehicle fleets, including the sale of credits generated pursuant to the federal Energy Policy Act, 42 U.S.C. 13201, et seq., to pay for the difference in cost between alternative fuels and conventional fuels;

(3) An assessment of the benefits or harm that increased use of alternative fuels may make to the state's economy and environment;

(4) Any other information that the department deems relevant.

431.181. PAYMENTS FOR THE TRANSPORTATION OF PROPERTY TO BE MADE WITHIN THIRTY DAYS AFTER DELIVERY, WHEN — WARRANTY REPAIR WORK, REIMBURSEMENT, RATES. — 1. Any person who enters into a contract with a transportation of property provider or an agent acting for a transportation of property provider for the transportation of property shall, after the property has been delivered in good condition by the transportation provider to the agreed upon destination within the agreed upon time limitation, make all scheduled payments pursuant to the terms of the contract or within thirty days if no time is specified in the contract.

2. Any person who has not been paid in accordance with subsection 1 of this section may bring an action in a court of competent jurisdiction against any person who has failed to pay.

3. Retailers who sell and service industrial, maintenance and construction power equipment or outdoor power equipment as defined in section 407.850, RSMo, and who do warranty repair work for a consumer under provisions of a manufacturer's express warranty, shall be reimbursed by the manufacturer for the warranty work at an hourly labor rate that is the same or greater than the hourly labor rate the retailer currently charges consumers for nonwarranty repair work.

SECTION 1. RETRO REFLECTIVE SHEETING FOR SCHOOL WARNING SIGNS, GRANTS ISSUED BY DEPARTMENT TO LOCAL GOVERNMENTS, PROCEDURE — RULEMAKING AUTHORITY. — 1. The director of the department of transportation shall have the authority to award grants to local governments for the purpose of obtaining retro reflective sheeting for school warning signs which shall:

(1) Be fluorescent yellow-green in color;

(2) Comply with Section 7B.07 of the Manual on Uniform Traffic Control Devices of the United States Department of Transportation; and

(3) Qualify as Type IX retro reflective sheeting as defined by the American Society for the Testing of Materials (ASTM).

2. The grants awarded pursuant to this section shall be paid from the general revenue fund, subject to appropriation, and may not exceed a total amount of two hundred thousand dollars.

3. To qualify for a grant pursuant to this section, local government entities shall contribute local funds, labor or materials in an amount not less than twenty-five percent of the amount of such community's grant award.

4. In awarding the grants, the director shall consider the community's need for assistance based on safety concerns related to traffic control near a school. The director shall also consider awarding grants to public governmental bodies in different regions throughout the state.

5. The department shall promulgate such rules as are necessary to implement this section. No rule or portion of a rule promulgated pursuant to this section shall become effective unless it has been promulgated pursuant to chapter 356, RSMo.

Approved July 10, 2001

SB 252 [SB 252]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes the Missouri National Guard and the City of Joplin to exchange two parcels of property.

AN ACT to authorize the conveyance of certain properties between the Missouri national guard and the city of Joplin.

SECTION
1. Conveyance of property by Missouri national guard to city of Joplin.
2. Consideration for property conveyed to city of Joplin — quit claim property to Missouri national guard.
3. Attorney general to approve form of conveyance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. CONVEYANCE OF PROPERTY BY MISSOURI NATIONAL GUARD TO CITY OF JOPLIN. — The Missouri national guard is hereby authorized to remise, release and forever quit claim the following described property to the city of Joplin, Missouri. The property to be conveyed is more particularly described as follows:
Part of the Northeast Quarter of Section 21, Township 27, Range 33, City of Joplin, Newton County, Missouri, described as: Commencing at the Northwest corner of the Northeast Quarter of said Section 21; thence South 01 deg. 42 min. 35 sec. West along the West line of said Northeast Quarter 50.01 feet; thence South 89 deg. 36 min. 28 sec. East and parallel with the North line of said Northeast Quarter 1404.01 feet to the True Point of Beginning; thence continuing South 89 deg. 36 min. 28 sec. East 100.00 feet; thence South 00 deg. 41 min. 30 sec. West 500.00 feet; thence North 89 deg. 36 min. 28 sec. West 100.00 feet; thence North 00 deg. 41 min. 30 sec. East 500.00 feet to the True Point of Beginning, containing 1.15 acres, more or less, subject to any easements or rights of way of record.

SECTION 2. CONSIDERATION FOR PROPERTY CONVEYED TO CITY OF JOPLIN — QUIT CLAIM PROPERTY TO MISSOURI NATIONAL GUARD. — In consideration for the conveyance in section 1 of this act, the city of Joplin is hereby authorized to remise, release and forever quit claim the following described property to the Missouri national guard. The property to be conveyed is more particularly described as follows:
Part of the Northeast Quarter of Section 21, Township 27, Range 33, City of Joplin, Newton County, Missouri, described as: Commencing at the Northwest corner of the Northeast Quarter of said Section 21; thence South 01 deg. 42 min. 35 sec. West along the West line of said Northeast Quarter 50.01 feet; thence South 89 deg. 36 min. 28 sec. East and parallel with the North line of said Northeast Quarter 534.01 feet to the True Point of Beginning; thence continuing South 89 deg. 36 min. 28 sec. East 100.00 feet; thence South 00 deg. 41 min. 30 sec. West 500.00 feet; thence North 89 deg. 36 min. 28 sec. West 100.00 feet; thence North 00 deg. 41 min. 30 sec. East 500.00 feet to the True Point of Beginning, containing 1.15 acres, more or less, subject to any easements or rights of way of record.

SECTION 3. ATTORNEY GENERAL TO APPROVE FORM OF CONVEYANCE. — The attorney general shall approve as to form the instruments of conveyance.

Approved July 10, 2001

SB 256 [SB 256]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes forty million dollars in bonds for various water and sewer programs; permits political subdivisions to require owners to connect to a sewer system.

AN ACT to amend chapter 644, RSMo, by adding thereto four new sections relating to political subdivisions, with an emergency clause.

SECTION
A. Enacting clause.
644.027. Sewer districts and systems made available to political subdivisions, no restriction allowed on connecting to system.
1. Commissioners may borrow additional $10,000,000 for improvements.
2. Commissioners may borrow additional $10,000,000 for rural water and sewer grants and loans.
3. Commissioners may borrow additional $20,000,000 for grants and loans to storm water control plans.
B. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 644, RSMo, is amended by adding thereto four new sections, to be known as sections 644.027, 1, 2 and 3, to read as follows:

644.027. SEWER DISTRICTS AND SYSTEMS MADE AVAILABLE TO POLITICAL SUBDIVISIONS, NO RESTRICTION ALLOWED ON CONNECTING TO SYSTEM. — Nothing in sections 644.006 through 644.150, RSMo, shall be deemed to restrict, inhibit or otherwise deny the power of any city, town or village, whether organized under the general law or by constitutional or special charter, any sewer district organized under chapter 204, RSMo, or chapter 249, RSMo, any public water supply district organized under chapter 247, RSMo, or any other municipality, political subdivision or district of the state which owns or operates a sewer system that provides for the collection and treatment of sewage, to require the owners of all houses, buildings or other facilities within a municipality, political subdivision or district to connect to the sewer system of the municipality, political subdivision or district when such sewer system is available.

SECTION 1. COMMISSIONERS MAY BORROW ADDITIONAL $10,000,000 FOR IMPROVEMENTS. — In addition to those sums authorized prior to August 28, 2002, the board of fund commissioners of the state of Missouri, as authorized by section 37(e) of article III of the Constitution of the state of Missouri, may borrow on the credit of this state the sum of ten million dollars in the manner described, and for the purposes set out, in chapter 640, RSMo, and this chapter.

SECTION 2. COMMISSIONERS MAY BORROW ADDITIONAL $10,000,000 FOR RURAL WATER AND SEWER GRANTS AND LOANS. — In addition to those sums authorized prior to August 28, 2002, the board of fund commissioners of the state of Missouri, as authorized by section 37(g) of article III of the Constitution of the state of Missouri, may borrow on the credit of this state the sum of ten million dollars in the manner described, and for the purposes set out, in chapter 640, RSMo, and in this chapter.

SECTION 3. COMMISSIONERS MAY BORROW ADDITIONAL $20,000,000 FOR GRANTS AND LOANS TO STORM WATER CONTROL PLANS. — In addition to those sums authorized prior to August 28, 2002, the board of fund commissioners of the state of Missouri, as authorized by section 37(h) of article III of the Constitution of the state of Missouri, may borrow on the credit of this state the sum of twenty million dollars in the manner described, and for the purposes set out, in chapter 640, RSMo, and in this chapter.

SECTION B. EMERGENCY CLAUSE. — Because of the need to provide adequate sewer systems within local political subdivisions, section 644.027 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section 644.027 of this act shall be in full force and effect upon its passage and approval.

Approved April 17, 2001

SB 266 [CCS HS HCS SCS SB 266]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Establishes a program for information on the inflammatory connective tissue disease, lupus, within the Department of Health.

AN ACT to repeal sections 198.531, 199.170, 199.180, 199.200, 701.322, 701.326 and 701.328, RSMo 2000, and to enact in lieu thereof twenty-two new sections relating to the department of health.

SECTION

A. Enacting clause.
191.714. Blood-borne pathogen standard required for occupational exposure of public employees to blood and other infectious materials — definitions — requirements of needleless system and sharps — violations, penalty.
191.938. Automated external defibrillator advisory committee established, duties, reports, membership, bylaws — termination date.
191.975. Adoption awareness, department duties — rulemaking authority.
192.729. Systemic lupus erythematosis program established — expansion of existing programs permitted — rulemaking authority.
196.367. Manufacturer's exemption, conditions.
198.531. Aging-in-place pilot program established — program requirements and monitoring — rulemaking authority.
199.170. Definitions.
199.180. Local health agency may institute proceedings for commitment — emergency temporary commitment permitted, when.
199.200. Procedure in circuit court — duties of local prosecuting officers — costs — emergency temporary commitment, procedures.
376.1199. Coverage for certain obstetrical/gynecological services — exclusion of contraceptive coverage permitted, when — rulemaking authority.
376.1290. Coverage for lead testing.
701.322. Laboratory services for disease, lead content — fee.
701.326. Lead poisoning information reporting system — level of poisoning to be reported — health care professional and department director to provide information.
701.328. Identity of persons participating to be protected — consent for release form, when requested — use and publishing of reports.
701.340. Childhood lead testing program established — test to be used — parental objection.
701.342. High risk areas identified — assessment and testing requirements — laboratory reporting — additional testing required, when.
701.343. Duties of the department.
701.344. Evidence of lead poisoning testing required for child-care facilities located in high risk areas — no denial of access to education permitted.
701.345. Childhood lead testing fund created.
701.346. Rulemaking authority.
701.348. Political subdivisions may provide more stringent requirements.
701.349. Severability clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 198.531, 199.170, 199.180, 199.200, 701.322, 701.326 and 701.328, RSMo 2000, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 191.714, 191.938, 191.975, 192.729, 196.367, 198.531, 199.170, 199.180, 199.200, 376.1199, 376.1290, 701.322, 701.326, 701.328, 701.340, 701.342, 701.343, 701.344, 701.345, 701.346, 701.348 and 701.349, to read as follows:

191.714. BLOOD-BORNE PATHOGEN STANDARD REQUIRED FOR OCCUPATIONAL EXPOSURE OF PUBLIC EMPLOYEES TO BLOOD AND OTHER INFECTIOUS MATERIALS — DEFINITIONS — REQUIREMENTS OF NEEDLELESS SYSTEM AND SHARPS — VIOLATIONS, PENALTY.— 1. As used in this section, the following terms shall mean:

(1) "Blood-borne pathogens", any pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV);

(2) "Employer", any employer having public employees with occupational exposure to blood or other material potentially containing blood-borne pathogens;

(3) "Frontline health care worker", a nonmanagerial employee responsible for direct patient care with potential occupational exposure to sharps-related injuries;

(4) "Public employee", an employee of the state or local governmental unit, or agency thereof, employed in a health care facility, home health care organization or other facility providing health care related services.

2. The department of health shall, no later than six months from the effective date of this section, adopt a blood- borne pathogen standard governing occupational exposure of public employees to blood and other potentially infectious materials that meets the standard in 29 CFR 1910.1030 and shall include a requirement that the most effective available needleless systems and sharps with engineered sharps injury protection be included as engineering and work practice controls. However, such engineering controls shall not be required if:

(1) None are available in the marketplace; or

(2) An evaluation committee, described in subsection 5 of this section, determines by means of objective product evaluation criteria that use of such devices will jeopardize patient or employee safety with regard to a specific medical procedure.

3. The use of a drug or biologic that is prepackaged with an administration system or used in a prefilled syringe and is approved for commercial distribution or investigational use by the federal Food and Drug Administration shall be exempt from the provisions of this section until June 1, 2004.

4. The sharps injury log maintained pursuant to this section shall include:

(1) The date and time of the exposure incident;

(2) The type and brand of sharp involved in the exposure incident;

(3) A description of the exposure incident to include:

(a) The job classification of the exposed employee;

(b) The department or work area where the exposure incident occurred;

(c) The number of hours worked at the time of the exposure incident;

(d) The procedure that the exposed employee was performing at the time of the incident;

(e) How the incident occurred;

(f) The body part involved in the exposure incident; and

(g) If the sharp had engineered sharps injury protection, whether the protective mechanism was activated, and whether the injury occurred before the protective mechanism was activated, during activation of the mechanism or after activation of the mechanism.

5. An evaluation committee established pursuant to this section shall consist of at least five members but no more than ten members. At least half of the members of the committee shall be frontline health care workers at such facility from a variety of occupational classifications and departments, including but not limited to nurses, nurse aides, technicians, phlebotomists and physicians, who shall be selected by the facility to advise the employer on the implementation of the requirements of this section. In facilities where there are one or more representatives certified by the state board of mediation to represent frontline healthcare workers at such facility, the facility shall consult with such representatives as to the composition and membership of the committee. All members of the committee shall be trained in the proper method of utilizing product evaluation criteria prior to the commencement of any product evaluation. Committee members shall serve two-year terms, with the initial terms beginning thirty days after the formation of such committee and the subsequent terms beginning every two years thereafter. Vacancies on the committee shall be filled for the remainder of the term by the facility in the same manner as was used to appoint the vacating member. Members may serve consecutive terms. Members shall not be given additional compensation for their duties on such committee.

6. Any reference in 29 CFR 1910.1030 to the assistant secretary shall, for purposes of this section, mean the director of the department of health.

7. Any person may report a suspected violation of this section or 29 CFR 1910.1030 to the department of health. If such report involves a private employer, the department shall notify the federal Occupational Safety and Health Administration of the alleged violation.

8. The department of health shall compile and maintain a list of needleless systems and sharps with engineered sharps injury protection which shall be available to assist employers in complying with the requirements of the blood-borne pathogen standard adopted pursuant to this section. The list may be developed from existing sources of information, including but not limited to the federal Food and Drug Administration, the federal Centers for Disease Control and Prevention, the National Institute of Occupational Safety and Health and the United States Department of Veterans Affairs.

9. By February first of each year, the department of health shall issue an annual report to the governor, state auditor, president pro tem of the senate, speaker of the house of representatives and the technical advisory committee on the quality of patient care and nursing practices on the use of needle safety technology as a means of reducing needlestick injuries. By February fifteenth of each year, such report shall be made available to the public on the department of health's Internet site.

10. Any employer who violates the provisions of this section shall be subject to a reduction in or loss of state funding as a result of such violations.

191.938. AUTOMATED EXTERNAL DEFIBRILLATOR ADVISORY COMMITTEE ESTABLISHED, DUTIES, REPORTS, MEMBERSHIP, BYLAWS — TERMINATION DATE. — 1. There is hereby established an "Automated External Defibrillator Advisory Committee" within the department of health, subject to appropriations.

2. The committee shall advise the department of health, the office of administration and the general assembly on the advisability of placing automated external defibrillators in public buildings, especially in public buildings owned by the state of Missouri or housing employees of the state of Missouri, with special consideration to state office buildings accessible to the public.

3. The committee shall issue an initial report no later than June 1, 2002, and a final report no later than December 31, 2002, to the department of health, the office of administration and the governor's office. The issues to be addressed in the report shall include, but need not be limited to:

(1) The advisability of placing automated external defibrillators in public buildings and the determination of the criteria as to which public buildings should have automated external defibrillators and how such automated external defibrillators' placement should be accomplished;

(2) Projections of the cost of the purchase, placement and maintenance of any recommended automated external defibrillator placement;

(3) Discussion of the need for, and cost of, training personnel in the use of automated external defibrillators and in cardiopulmonary resuscitation;

(4) The integration of automated external defibrillators with existing emergency service.

4. The committee shall be composed of the following members appointed by the director of the department of health:

(1) A representative of the department of health;

(2) A representative of the division of facilities management in the office of administration;

(3) A representative of the American Red Cross;

(4) A representative of the American Heart Association;

(5) A physician who has experience in the emergency care of patients.

5. The department of health member shall be the chair of the first meeting of the committee. At the first meeting, the committee shall elect a chairperson from its membership. The committee shall meet at the call of the chairperson, but not less than four times a year.

6. The department of health shall provide technical and administrative support services as required by the committee. The office of administration shall provide technical support to the committee in the form of information and research on the number, size, use and occupancy of buildings in which employees of the state of Missouri work.

7. Members of the committee shall receive no compensation for their services as members, but shall be reimbursed for expenses incurred as a result of their duties as members of the committee.

8. The committee shall adopt written bylaws to govern its activities.

9. The automated external defibrillator advisory committee shall terminate on June 1, 2003.

191.975. Adoption awareness, department duties — rulemaking authority. — 1. This section shall be known and may be cited as the "Adoption Awareness Law".

2. To raise public awareness and to educate the public, the department of social services, with the assistance of the department of health, shall be responsible for:

(1) Collecting and distributing resource materials to educate the public about foster care and adoption;

(2) Developing and distributing educational materials, including but not limited to videos, brochures and other media as part of a comprehensive public relations campaign about the positive option of adoption and foster care. The materials shall include, but not be limited to, information about:

(a) The benefits of adoption and foster care;

(b) Adoption and foster care procedures;

(c) Means of financing the cost of adoption and foster care, including but not limited to adoption subsidies, foster care payments and special needs adoption tax credits;

(d) Options for birth parents in choosing adoptive parents;

(e) Protection for and rights of birth parents and adoptive parents prior to and following the adoption;

(f) Location of adoption and foster care agencies;

(g) Information regarding various state health and social service programs for pregnant women and children, including but to limited to medical assistance programs and temporary assistance for needy families (TANF); and

(h) Referrals to appropriate counseling services, including but not be limited to counseling services for parents who are considering retaining custody of their children, placing their children for adoption, or becoming foster or adoptive parents; but excluding any referrals for abortion or to abortion facilities;

(3) Making such educational materials available through state and local public health clinics, public hospitals, family planning clinics, abortion facilities as defined in section 188.015, RSMo, maternity homes as defined in section 135.600, RSMo, child-placing agencies licensed pursuant to sections 210.481 to 210.536, RSMo, attorneys whose practice involves private adoptions, in vitro fertilization clinics and private physicians for distribution to their patients who request such educational materials. Such materials shall also be available to the public through the department of social services' Internet web site; and

(4) Establishing a toll-free telephone number for information on adoption and foster care.

3. The provisions of this section shall be subject to appropriations.

4. The department of social services shall promulgate rules for the implementation of this section in accordance with chapter 536, RSMo.

192.729. SYSTEMIC LUPUS ERYTHEMATOSIS PROGRAM ESTABLISHED — EXPANSION OF EXISTING PROGRAMS PERMITTED — RULEMAKING AUTHORITY. — 1. There is hereby established a state systemic lupus erythematosus program in the department of health. Subject to appropriations, the lupus program shall:

(1) Track and monitor the incidents of lupus occurring throughout the state;

(2) Identify medical professionals and providers that are knowledgeable or specialize in the treatment of lupus and related diseases or illnesses; and

(3) Promote lupus research and public awareness through collaborations with academic partners throughout the state and local boards, including the Missouri chapter of the lupus foundation.

2. The department may utilize or expand existing programs such as the office of women's health, the office of minority health and the state arthritis program established in sections 192.700 to 192.727 to meet the requirements of this section.

3. The department may promulgate rules to implement the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

196.367. MANUFACTURER'S EXEMPTION, CONDITIONS. — Effective July 1, 2005, any manufacturer or distributor shall be exempted from the provisions of sections 196.365 to 196.445 if the manufacturer satisfies all applicable Food and Drug Administration regulations.

198.531. AGING-IN-PLACE PILOT PROGRAM ESTABLISHED — PROGRAM REQUIREMENTS AND MONITORING — RULEMAKING AUTHORITY. — 1. The division of aging, in collaboration with qualified Missouri schools and universities, shall establish an aging-in-place pilot program at a maximum of four selected sites throughout the state which will provide a continuum of care for elders who need long-term care. **[**One aging-in-place pilot program shall be at a thirty-five bed facility in a county of the first classification without a charter form of government with a population of at least ninety thousand but not more than one hundred thousand and a county of the first classification with a population of at least forty-two thousand but less than forty-five thousand and a county of the third classification without a township form

of government with a population of at least sixteen thousand nine hundred but less than seventeen thousand.**]** For purposes of this section, "qualified Missouri schools and universities" means any Missouri school or university which has a school of nursing, a graduate nursing program, or any other similar program or specialized expertise in the areas of aging, long-term care or health services for the elderly.

2. The pilot program shall:

(1) Deliver a full range of physical and mental health services to residents in the least restrictive environment of choice to reduce the necessity of relocating such residents to other locations as their health care needs change;

(2) Base licensure on services provided rather than on facility type; and

(3) Be established in selected urban, rural and regional sites throughout the state.

3. The directors of the division of aging and division of medical services shall apply for all federal waivers necessary to provide Medicaid reimbursement for health care services received through the aging-in-place pilot program.

4. The division of aging shall monitor the pilot program and report to the general assembly on the effectiveness of such program, including quality of care, resident satisfaction and cost-effectiveness to include the cost equivalent of unpaid or volunteer labor.

5. Developments authorized by this section shall be exempt from the provisions of sections 197.300 to 197.367, RSMo, and shall be licensed by the division of aging.

199.170. DEFINITIONS. — The following terms, as used in sections 199.170 to 199.270, mean:

(1) "Active tuberculosis", tuberculosis disease that is demonstrated to be contagious by clinical, bacteriological, or radiological evidence. Tuberculosis is considered active until cured;

(2) "Cure" or "treatment to cure", the completion of a recommended course of therapy as defined in subdivision (5) of this section and as determined by the attending physician;

(3) "Local board", any legally constituted local city or county board of health or health center board of trustees or the director of health of the city of Kansas City**, the director of the Springfield-Greene County health department, the director of health of St. Louis County** or the commissioner of health of the city of St. Louis, or in the absence of such board, the county commission or the county board of tuberculosis hospital commissioners of any county;

(4) "Potential transmitter", any person who has the diagnosis of pulmonary tuberculosis but has not begun a recommended course of therapy, or who has the diagnosis of pulmonary tuberculosis and has started a recommended course of therapy but has not completed the therapy. This status applies to any individual with tuberculosis, regardless of his or her current bacteriologic status;

(5) "Recommended course of therapy", a regimen of antituberculosis chemotherapy in accordance with medical standards of the American Thoracic Society and the Centers for Disease Control and Prevention.

199.180. LOCAL HEALTH AGENCY MAY INSTITUTE PROCEEDINGS FOR COMMITMENT — EMERGENCY TEMPORARY COMMITMENT PERMITTED, WHEN. — 1. A person found to have tuberculosis shall follow the instructions of the local board, shall obtain the required treatment, and shall minimize the risk of infecting others with tuberculosis.

2. When a person with active tuberculosis, or a person who is a potential transmitter, violates the rules, regulations, instructions, or orders promulgated by the department of health or the local board, and is thereby conducting himself or herself so as to expose other persons to danger of infection, after having been directed by the local board to comply with such rules, regulations, instructions, or orders, the local board may institute proceedings by petition for commitment, returnable to the circuit court of the county in which such person resides, or if the person be a nonresident or has no fixed place of abode, then in the county in which the person

is found. Strictness of pleading shall not be required and a general allegation that the public health requires commitment of the person named therein shall be sufficient.

3. If the board determines that a person with active tuberculosis, or a person who is a potential transmitter, poses an immediate threat by conducting himself or herself so as to expose other persons to an immediate danger of infection, the board may file an ex parte petition for emergency temporary commitment pursuant to subsection 5 of section 199.200.

199.200. PROCEDURE IN CIRCUIT COURT — DUTIES OF LOCAL PROSECUTING OFFICERS — COSTS — EMERGENCY TEMPORARY COMMITMENT, PROCEDURES. — 1. Upon filing of the petition, the court shall set the matter down for a hearing either during term time or in vacation, which time shall be not less than five days nor more than fifteen days subsequent to filing. A copy of the petition together with summons stating the time and place of hearing shall be served upon the person three days or more prior to the time set for the hearing. Any X-ray picture and report of any written report relating to sputum examinations certified by the department of health **or local board** shall be admissible in evidence without the necessity of the personal testimony of the person or persons making the examination and report.

2. The prosecuting attorney or the city attorney shall act as legal counsel for their respective local boards in this proceeding and such authority is hereby granted. The court shall appoint legal counsel for the individual named in the petition if requested to do so if such individual is unable to employ counsel.

3. All court costs incurred in proceedings under sections 199.170 to 199.270, including examinations required by order of the court but excluding examinations procured by the person named in the petition, shall be borne by the county in which the proceedings are brought.

4. Summons shall be served by the sheriff of the county in which proceedings under sections 199.170 to 199.270 are initiated and return thereof shall be made as in other civil cases.

5. Upon the filing of an ex parte petition for emergency temporary commitment pursuant to subsection 3 of section 199.180, the court shall hear the matter within ninety-six hours of such filing. The local board shall have the authority to detain the individual named in the petition pending the court's ruling on the ex parte petition for emergency temporary commitment. If the petition is granted, the individual named in the petition shall be confined in a facility designated by the curators of the University of Missouri in accordance with section 199.230 until a full hearing pursuant to subsections 1 to 4 of this section is held.

376.1199. COVERAGE FOR CERTAIN OBSTETRICAL/GYNECOLOGICAL SERVICES — EXCLUSION OF CONTRACEPTIVE COVERAGE PERMITTED, WHEN — RULEMAKING AUTHORITY. — 1. Each health carrier or health benefit plan that offers or issues health benefit plans providing obstetrical/gynecological benefits and pharmaceutical coverage, which are delivered, issued for delivery, continued or renewed in this state on or after January 1, 2002, shall:

(1) Notwithstanding the provisions of subsection 4 of section 354.618, RSMo, provide enrollees with direct access to the services of a participating obstetrician, participating gynecologist or participating obstetrician/gynecologist of her choice within the provider network for covered services. The services covered by this subdivision shall be limited to those services defined by the published recommendations of the accreditation council for graduate medical education for training an obstetrician, gynecologist or obstetrician/-gynecologist, including but not limited to diagnosis, treatment and referral for such services. A health carrier shall not impose additional co-payments, coinsurance or deductibles upon any enrollee who seeks or receives health care services pursuant to this subdivision, unless similar additional co-payments, coinsurance or deductibles are imposed for other types of health care services received within the provider network. Nothing in

this subsection shall be construed to require a health carrier to perform, induce, pay for, reimburse, guarantee, arrange, provide any resources for or refer a patient for an abortion, as defined in section 188.015, RSMo, other than a spontaneous abortion or to prevent the death of the female upon whom the abortion is performed, or to supersede or conflict with section 376.805; and

(2) Notify enrollees annually of cancer screenings covered by the enrollees' health benefit plan and the current American Cancer Society guidelines for all cancer screenings or notify enrollees at intervals consistent with current American Cancer Society guidelines of cancer screenings which are covered by the enrollees' health benefit plans. The notice shall be delivered by mail unless the enrollee and health carrier have agreed on another method of notification; and

(3) Include coverage for services related to diagnosis, treatment and appropriate management of osteoporosis when such services are provided by a person licensed to practice medicine and surgery in this state, for individuals with a condition or medical history for which bone mass measurement is medically indicated for such individual. In determining whether testing or treatment is medically appropriate, due consideration shall be given to peer reviewed medical literature. A policy, provision, contract, plan or agreement may apply to such services the same deductibles, coinsurance and other limitations as apply to other covered services; and

(4) If the health benefit plan also provides coverage for pharmaceutical benefits, provide coverage for contraceptives either at no charge or at the same level of deductible, coinsurance or co-payment as any other covered drug. No such deductible, coinsurance or co-payment shall be greater than any drug on the health benefit plan's formulary. As used in this section, "contraceptive" shall include all prescription drugs and devices approved by the federal Food and Drug Administration for use as a contraceptive, but shall exclude all drugs and devices that are intended to induce an abortion, as defined in section 188.015, RSMo, which shall be subject to section 376.805. Nothing in this subdivision shall be construed to exclude coverage for prescription contraceptive drugs or devices ordered by a health care provider with prescriptive authority for reasons other than contraceptive or abortion purposes.

2. For the purposes of this section, "health carrier" and "health benefit plan" shall have the same meaning as defined in section 376.1350.

3. The provisions of this section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, short-term major medical policies of six months or less duration, or any other supplemental policy as determined by the director of the department of insurance.

4. Notwithstanding the provisions of subdivision (4) of subsection 1 of this section to the contrary:

(1) Any health carrier may issue to any person or entity purchasing a health benefit plan, a health benefit plan that excludes coverage for contraceptives if the use or provision of such contraceptives is contrary to the moral, ethical or religious beliefs or tenets of such person or entity;

(2) Upon request of an enrollee who is a member of a group health benefit plan and who states that the use or provision of contraceptives is contrary to his or her moral, ethical or religious beliefs, any health carrier shall issue to or on behalf of such enrollee a policy form that excludes coverage for contraceptives. Any administrative costs to a group health benefit plan associated with such exclusion of coverage not offset by the decreased costs of providing coverage shall be borne by the group policyholder or group plan holder;

(3) Any health carrier which is owned, operated or controlled in substantial part by an entity that is operated pursuant to moral, ethical or religious tenets that are contrary

to the use or provision of contraceptives shall be exempt from the provisions of subdivision (4) of subsection 1 of this section.

For purposes of this subsection, if new premiums are charged for a contract, plan or policy, it shall be determined to be a new contract, plan or policy.

5. Except for a health carrier that is exempted from providing coverage for contraceptives pursuant to this section, a health carrier shall allow enrollees in a health benefit plan that excludes coverage for contraceptives pursuant to subsection 4 of this section to purchase a health benefit plan that includes coverage for contraceptives.

6. Any health benefit plan issued pursuant to subsection 1 of this section shall provide clear and conspicuous written notice on the enrollment form or any accompanying materials to the enrollment form and the group health benefit plan contract:

(1) Whether coverage for contraceptives is or is not included;

(2) That an enrollee who is a member of a group health benefit plan with coverage for contraceptives has the right to exclude coverage for contraceptives if such coverage is contrary to his or her moral, ethical or religious beliefs; and

(3) That an enrollee who is a member of a group health benefit plan without coverage for contraceptives has the right to purchase coverage for contraceptives.

7. Health carriers shall not disclose to the person or entity who purchased the health benefit plan the names of enrollees who exclude coverage for contraceptives in the health benefit plan or who purchase a health benefit plan that includes coverage for contraceptives. Health carriers and the person or entity who purchased the health benefit plan shall not discriminate against an enrollee because the enrollee excluded coverage for contraceptives in the health benefit plan or purchased a health benefit plan that includes coverage for contraceptives.

8. The departments of health and insurance may promulgate rules necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

376.1290. COVERAGE FOR LEAD TESTING. — 1. Each entity offering individual and group health insurance policies providing coverage on an expense- incurred basis, individual and group service or indemnity type contracts issued by a health services corporation, individual and group service contracts issued by a health maintenance organization, all self-insured group arrangements, to the extent not preempted by federal law, and all managed health care delivery entities of any type or description that are delivered, issued for delivery, continued or renewed in this state on or after January 1, 2002, shall offer coverage for testing pregnant women for lead poisoning and for all testing for lead poisoning authorized by sections 701.340 to 701.349, RSMo, or by rule of the department of health promulgated pursuant to sections 701.340 to 701.349, RSMo.

2. Health care services required by this section shall not be subject to any greater deductible or co-payment than any other health care service provided by the policy, contract or plan.

3. No entity enumerated in subsection 1 of this section shall reduce or eliminate coverage as a result of the requirements of this section.

4. Nothing in this section shall apply to accident-only, specified disease, hospital indemnity, Medicare supplement, long-term care or other limited benefit health insurance policies.

701.322. LABORATORY SERVICES FOR DISEASE, LEAD CONTENT — FEE. — Upon request of a physician, health care facility or third-party insurer, the department may provide laboratory services for tests related to contagious or infectious diseases. The department may conduct laboratory testing of blood specimens for lead content on behalf of a physician, hospital, clinic, free clinic, municipality or private organization which cannot secure or provide such services through other sources. The department of health may charge a fee for laboratory services rendered **[**under**]** **pursuant to** this section. **[**Such**]** Fees **for tests related to contagious or infectious diseases** shall be deposited in a separate account in the Missouri public health services fund, created in section 192.900, RSMo, and funds in such account shall be used to provide laboratory testing services by the department. **Fees for laboratory testing of blood specimens for lead content shall be deposited in the childhood lead testing fund created in section 701.345, RSMo.**

701.326. LEAD POISONING INFORMATION REPORTING SYSTEM — LEVEL OF POISONING TO BE REPORTED — HEALTH CARE PROFESSIONAL AND DEPARTMENT DIRECTOR TO PROVIDE INFORMATION. — 1. The department of health shall establish and maintain a lead poisoning information reporting system which shall include a record of lead poisoning cases which occur in Missouri along with the information concerning these cases which is deemed necessary and appropriate to conduct comprehensive epidemiologic studies of lead poisoning in this state and to evaluate the appropriateness of lead abatement programs.

2. The director of the department of health shall promulgate rules and regulations specifying the level of lead poisoning which shall be reported and any accompanying information to be reported in each case. Such information may include the patient's name, **full residence** address, **and** diagnosis, **including the blood lead level. Such information may include** pathological findings, the stage of the disease, environmental and known occupational factors, method of treatment and other relevant data from medical histories. Reports of lead poisoning shall be filed with the director of the department of health within a period of time specified by the director. The department shall prescribe the form and manner in which the information shall be reported.

3. The attending health care professional of any patient with lead poisoning shall provide to the department of health the information required pursuant to this section.

4. When a case of lead poisoning is reported to the director, the director shall inform such local boards of health, public health agencies, and other persons and organizations as the director deems necessary; provided that, the name of any child contracting lead poisoning shall not be included unless the director determines that such inclusion is necessary to protect the health and well-being of the affected individual.

701.328. IDENTITY OF PERSONS PARTICIPATING TO BE PROTECTED — CONSENT FOR RELEASE FORM, WHEN REQUESTED — USE AND PUBLISHING OF REPORTS. — 1. The department of health shall protect the identity of the patient and physician involved in the reporting required by sections 701.318 to **[**701.330**]** **701.349**. Such identity shall not be revealed except that the identity of the patient shall be released only upon written consent of the patient. The identity of the physician shall be released only upon written consent of the physician.

2. The department may release without consent any information obtained pursuant to sections 701.318 to **[**701.330**]** **701.349**, including the identities of certain patients or physicians, when the information is necessary for the performance of duties by public employees within, or the legally designated agents of, any state or local agency, department or political subdivision,

but only when such employees and agents need to know such information to perform their public duties.

3. The department shall use or publish reports based upon materials reported pursuant to sections 701.318 to **[**701.330**]** **701.349** to advance research, education, treatment and lead abatement. **The department shall geographically index the data from lead testing reports to determine the location of areas of high incidence of lead poisoning.** The department shall provide qualified researchers with data from the reported information upon the researcher's compliance with appropriate conditions as provided by rule and upon payment of a fee to cover the cost of processing the data.

701.340. CHILDHOOD LEAD TESTING PROGRAM ESTABLISHED — TEST TO BE USED — PARENTAL OBJECTION. — 1. Beginning January 1, 2002, the department of health shall, subject to appropriations, implement a childhood lead testing program which requires every child less than six years of age to be tested for lead poisoning in accordance with the provisions of sections 701.340 to 701.349. In coordination with the department of health, every health care facility serving children less than six years of age, including but not limited to hospitals and clinics licensed pursuant to chapter 197, RSMo, shall take appropriate steps to ensure that their patients receive such lead poisoning testing.

2. The test for lead poisoning shall consist of a blood sample that shall be sent for analysis to a laboratory licensed pursuant to the federal Clinical Lab Improvement Act (CLIA). The department of health shall, by rule, determine the blood test protocol to be used.

3. Nothing in sections 701.340 to 701.349 shall be construed to require a child to undergo lead testing whose parent or guardian objects to the testing in a written statement that states the parent's or guardian's reason for refusing such testing.

701.342. HIGH RISK AREAS IDENTIFIED — ASSESSMENT AND TESTING REQUIREMENTS — LABORATORY REPORTING — ADDITIONAL TESTING REQUIRED, WHEN. — 1. The department of health shall, using factors established by the department, including but not limited to the geographic index from data from testing reports, identify geographic areas in the state that are at high risk for lead poisoning. All children six months of age through six years of age who reside or spend more than ten hours a week in an area identified as high risk by the department shall be tested annually for lead poisoning.

2. Every child six months through six years of age not residing or spending more than ten hours a week in geographic areas identified as high risk by the department shall be assessed annually using a questionnaire to determine whether such child is at high risk for lead poisoning. The department, in collaboration with the department of social services, shall develop the questionnaire, which shall follow the recommendations of the federal Centers for Disease Control and Prevention. The department may modify the questionnaire to broaden the scope of the high-risk category. Local boards or commissions of health may add questions to the questionnaire.

3. Every child deemed to be at high risk for lead poisoning according to the questionnaire developed pursuant to subsection 2 of this section shall be tested using a blood sample.

4. Any child deemed to be at high risk for lead poisoning pursuant to this section who resides in housing currently undergoing renovations may be tested at least once every six months during the renovation and once after the completion of the renovation.

5. Any laboratory providing test results for lead poisoning pursuant to sections 701.340 to 701.349 shall notify the department of the test results of any child tested for lead poisoning as required in section 701.326. Any child who tests positive for lead poisoning shall receive follow-up testing in accordance with rules established by the department.

The department shall, by rule, establish the methods and intervals of follow-up testing and treatment for such children.

6. When the department is notified of a case of lead poisoning, the department shall require the testing of all other children less than six years of age, and any other children or persons at risk, as determined by the director, who are residing or have recently resided in the household of the lead poisoned child.

701.343. DUTIES OF THE DEPARTMENT. — The department of health shall have the following duties regarding the childhood lead testing program:

(1) By January 1, 2002, the department shall develop an educational mailing to be sent to every physician licensed by and practicing in this state informing such physician of the childhood lead testing program and the responsibilities of physicians pursuant to such program;

(2) The department of health shall, by January 1, 2002, develop guidelines, educational materials and a questionnaire to be used by physicians to determine whether pregnant women are at high risk and should be tested for lead poisoning;

(3) The department shall apply for, take all steps necessary to qualify for and accept any federal funds made available or allotted pursuant to any federal act or program for state lead poisoning prevention programs;

(4) The director of the department of health or the director's designee may, subject to appropriations, contract with a public agency or a university, or collaborate with any agencies, individuals or groups to provide necessary services, develop educational programs, scientific research and organization, and interpret data from lead testing reports;

(5) The department shall promulgate such rules as may be necessary; and

(6) Beginning January 1, 2003, and every January first thereafter, the department of health shall submit a report evaluating the childhood lead testing program as set forth in sections 701.340 to 701.349 to the governor and the following committees of the Missouri legislature: senate appropriations committee, senate public health and welfare committee, house appropriations - health and mental health committee and house public health committee.

701.344. EVIDENCE OF LEAD POISONING TESTING REQUIRED FOR CHILD-CARE FACILITIES LOCATED IN HIGH RISK AREAS — NO DENIAL OF ACCESS TO EDUCATION PERMITTED. — 1. In geographic areas determined to be of high risk for lead poisoning as set forth in section 701.342, every child care facility, as defined in section 210.201, RSMo, and every child care facility affiliated with a school system, a business organization or a nonprofit organization shall, within thirty days of enrolling a child, require the child's parent or guardian to provide evidence of lead poisoning testing in the form of a statement from the health care professional that administered the test or provide a written statement that states the parent's or guardian's reason for refusing such testing. If there is no evidence of testing, the person in charge of the facility shall provide the parent or guardian with information about lead poisoning and locations in the area where the child can be tested. When a parent or guardian cannot obtain such testing, the person in charge of the facility may arrange for the child to be tested by a local health officer with the consent of the child's parent or guardian. At the beginning of each year of enrollment in such facility, the parent or guardian shall provide proof of testing in accordance with the provisions of sections 701.340 to 701.349 and any rules promulgated thereunder.

2. No child shall be denied access to education or child care because of failure to comply with the provisions of sections 701.340 to 701.349.

701.345. CHILDHOOD LEAD TESTING FUND CREATED. — 1. There is hereby created in the state treasury the "Childhood Lead Testing Fund". The state treasurer shall deposit to the credit of the fund all moneys which may be appropriated to it by the general assembly and also any gifts, contributions, grants, bequests or other aid received from federal, private or other sources related to lead testing, education and screening. The general assembly may appropriate moneys to the fund for the support of the childhood lead testing program established in sections 701.340 to 701.349. The moneys in the fund shall be used to fund the administration of childhood lead programs, the administration of blood tests to uninsured children, educational materials and analysis of lead blood test reports and case management.

2. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of the general revenue fund at the end of the biennium.

701.346. RULEMAKING AUTHORITY. — The department of health shall promulgate rules to implement the provisions of sections 701.340 to 701.349. No rule or portion of a rule promulgated under the authority of sections 701.340 to 701.349 shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

701.348. POLITICAL SUBDIVISIONS MAY PROVIDE MORE STRINGENT REQUIREMENTS. — Nothing in sections 701.340 to 701.349 shall prohibit a political subdivision of this state or a local board of health from enacting and enforcing ordinances, rules or laws for the prevention, detection and control of lead poisoning which provide the same or more stringent provisions as sections 701.340 to 701.349, or the rules promulgated thereunder.

701.349. SEVERABILITY CLAUSE. — If any provisions of sections 701.340 to 701.349, or the application thereof, to any persons or circumstances is held invalid, such validity shall not affect other provisions or applications of sections 701.340 to 701.349 that can be given effect without the invalid provision or application, and to this end the provisions of sections 701.340 to 701.349 are declared to be severable.

Approved July 12, 2001

SB 267 [CCS HS HCS SS SCS SB 267]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Revises various civil and criminal procedures.

AN ACT to repeal sections 43.503, 56.085, 56.765, 57.130, 67.133, 194.115, 210.140, 247.224, 287.610, 303.025, 374.700, 452.556, 455.040, 476.010, 478.610, 479.020, 479.150, 482.330, 483.500, 488.426, 488.429, 488.447, 488.607, 488.5332, 488.5336, 490.130, 491.300, 508.190, 512.180, 534.070, 535.030, 550.120, 565.030, 574.075, 595.030, 595.035, 595.045, 610.105, 632.480, 632.483, 632.492 and 632.495, RSMo 2000, section 303.041 as enacted by senate substitute for house substitute for house committee substitute for house bill no. 1797, ninetieth general assembly, second regular session, and section 303.041 as enacted by conference committee substitute for house substitute for senate substitute for senate committee substitute for senate bill no. 19, ninetieth general assembly, first regular session, relating to court procedures, and to enact in lieu thereof fifty-five new sections relating to the same subject, with penalty provisions.

SECTION

A. Enacting clause.
43.503. Arrest, charge and disposition of misdemeanors and felonies to be sent to highway patrol — procedure for certain juveniles.
56.085. Criminal investigations, prosecutors or circuit attorneys may obtain subpoena for witnesses, records and books.
56.765. Funding — surcharge to be collected in criminal and infraction cases, exceptions — registration fees — funds created — audit — use of fund.
57.130. Penalties and forfeitures, collection of — expiration date.
67.133. Court costs in civil and criminal cases, exceptions — collection and deposit procedure — distribution — county entitled to judgment, when.
194.115. Autopsy — consent required — penalty for violation — availability of report, to whom.
210.140. Privileged communication not recognized, exception.
247.165. Water service to annexed territory, agreement may be developed, procedure.
247.171. Proportion of sum of all outstanding bonds and debts, calculation.
287.610. Administrative law judges, appointment and qualification — annual evaluations — removal, review committee, process — jurisdiction, powers — continuing training required — rules.
303.025. Duty to maintain financial responsibility, misdemeanor penalty for failure to maintain — exception, methods — court to notify department of revenue, additional punishment, right of appeal.
303.041. Failure to maintain financial responsibility — notice, procedure, contents — suspension of license and registration — request for hearing, right, effect — subsequent acquisition of financial responsibility, effect — duration of suspension, fee.
303.041. Failure to maintain financial responsibility — notice, procedure, contents — suspension of license and registration — request for hearing, right, effect — subsequent acquisition of financial responsibility, effect — duration of suspension, fee.
374.700. Definitions.
374.757. Notification by agent of intention to apprehend — local law enforcement may accompany agent — violations, penalties.
386.515. Exclusivity of circuit court review procedure — rehearing, procedure.
452.556. Handbook, contents, availability.
455.040. Hearings, when — duration of orders, renewal, requirements — copies of orders to be given, validity — duties of law enforcement agency — information may be entered in MULES.
476.010. Courts of record.
476.365. Certification of official court reporters required.
478.610. Circuit No. 13, number of judges, divisions — when judges elected — additional associate circuit judge for Boone County, when.
479.020. Municipal judges, selection, tenure, jurisdiction, qualifications, course of instruction.
479.150. Trial by jury, certification for assignment — exception, Springfield municipal court, when, procedure, costs.
482.330. Restrictions on filing of claims — statement required of plaintiff — counterclaim not prohibited — suit may be brought, where.
483.500. Fees of the clerks of the supreme court and court of appeals — collection.
488.426. Deposit required in civil actions — exemptions — surcharge to remain in effect.
488.429. Fund paid to treasurer designated by circuit judge — use of fund for law library.
488.447. Court restoration fund — special surcharge in civil cases to be deposited in fund — exempt cases — expires when.
488.607. Additional surcharges authorized for municipal and associate circuit courts for cities and towns having shelters for victims of domestic violence, amount, exceptions.
488.5332. Surcharge in criminal cases, when, exceptions — payment to independent living center fund.
488.5336. Court costs may be increased, amount, how, exceptions, deposit — additional assessment — use of funds — amount of reimbursement.
490.130. Certified records of courts to be evidence.
491.300. Fees of interpreters.
508.190. Party applying to pay costs, when — paid to which county — jury selection and service costs paid by county in which case originated.
512.180. Appeals from cases tried before associate circuit judge.
534.070. Complaint and summons — court date assigned, when.
535.030. Service of summons — court date included in summons.
536.160. Refund of funds paid into court, when.
547.035. Postconviction DNA testing for persons in the custody of the department — motion, contents — procedure.
547.037. Motion for release filed, when, procedure.
550.120. Costs in change of venue — costs defined.
565.030. Trial procedure, first degree murder.
574.075. Drunkenness or drinking in certain places prohibited — violation a misdemeanor.

595.030. Compensation, out-of-pocket loss requirement, maximum amount for counseling expenses — award, computation — deduction — medical care, requirements — counseling, requirements — maximum award — joint claimants, distribution — method, timing of payment determined by division.
595.035. Award standards to be established — amount of award, factors to be considered — purpose of fund, reduction for other compensation received by victim, exceptions — time limitation.
595.045. Funding — costs for certain violations, amount, distribution of funds, audit — judgments in certain criminal cases, amount — failure to pay, effect, notice — court cost deducted — insufficient funds to pay claims, procedure — interest earned, disposition — contingent expiration date for certain subsections.
610.105. Effect of nolle pros — dismissal — sentence suspended on record — not guilty due to mental disease or defect, effect.
632.480. Definitions.
632.483. Notice to attorney general, when — contents of notice — immunity from liability, when — multidisciplinary team established — prosecutors' review committee established.
632.492. Trial — procedure — assistance of counsel, right to jury, when.
632.495. Unanimous verdict required — offender committed to custody of department of mental health, when — release, when — mistrial procedures.
650.300. Definitions.
650.310. Office of victims of crime established, purpose — duties.
1. Evidence capable of being tested for DNA must be preserved by highway patrol.
2. Additional $20 court cost imposed, municipal ordinance violations — waiver, when — collection (St. Louis City).
3. Additional $5 court cost imposed, municipal ordinance violations — waiver, when — collection (St. Louis City).
247.224. Residents may elect to be removed from a public water supply district if unable to receive services, procedure, liability for costs (Franklin County).

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 43.503, 56.085, 56.765, 57.130, 67.133, 194.115, 210.140, 247.224, 287.610, 303.025, 303.041, 374.700, 452.556, 455.040, 476.010, 478.610, 479.020, 479.150, 482.330, 483.500, 488.426, 488.429, 488.447, 488.607, 488.5332, 488.5336, 490.130, 491.300, 508.190, 512.180, 534.070, 535.030, 550.120, 565.030, 574.075, 595.030, 595.035, 595.045, 610.105, 632.480, 632.483, 632.492 and 632.495, RSMo 2000, section 303.041 as enacted by senate substitute for house substitute for house committee substitute for house bill no. 1797, ninetieth general assembly, second regular session, and section 303.041 as enacted by conference committee substitute for house substitute for senate substitute for senate committee substitute for senate bill no. 19, ninetieth general assembly, first regular session, are repealed and fifty-five new sections enacted in lieu thereof, to be known as sections 43.503, 56.085, 56.765, 57.130, 67.133, 194.115, 210.140, 247.165, 247.171, 287.610, 303.025, 303.041, 374.700, 374.757, 386.515, 452.556, 455.040, 476.010, 476.365, 478.610, 479.020, 479.150, 482.330, 483.500, 488.426, 488.429, 488.447, 488.607, 488.5332, 488.5336, 490.130, 491.300, 508.190, 512.180, 534.070, 535.030, 536.160, 547.035, 547.037, 550.120, 565.030, 574.075, 595.030, 595.035, 595.045, 610.105, 632.480, 632.483, 632.492, 632.495, 650.300, 650.310, 1, 2 and 3, to read as follows:

43.503. ARREST, CHARGE AND DISPOSITION OF MISDEMEANORS AND FELONIES TO BE SENT TO HIGHWAY PATROL — PROCEDURE FOR CERTAIN JUVENILES. — 1. For the purpose of maintaining complete and accurate criminal history record information, all police officers of this state, the clerk of each court, the department of corrections, the sheriff of each county, the chief law enforcement official of a city not within a county and the prosecuting attorney of each county or the circuit attorney of a city not within a county shall submit certain criminal arrest, charge, and disposition information to the central repository for filing without undue delay in the form and manner required by sections 43.500 to 43.530.

2. All law enforcement agencies making misdemeanor and felony arrests as determined by section 43.506 shall furnish without undue delay, to the central repository, fingerprints, charges, and descriptions of all persons who are arrested for such offenses on standard fingerprint forms supplied by the highway patrol. All such agencies shall also notify the central repository of all

decisions not to refer such arrests for prosecution. An agency making such arrests may enter into arrangements with other law enforcement agencies for the purpose of furnishing without undue delay such fingerprints, charges, and descriptions to the central repository upon its behalf. In instances where an individual less than seventeen years of age is taken into custody for an offense which would be considered a felony if committed by an adult, the arresting officer shall take one set of fingerprints for the central repository and may take another set for inclusion in a local or regional automated fingerprint identification system. These fingerprints shall be taken on fingerprint cards which are plainly marked "juvenile card" and shall be provided by the central repository. The fingerprint cards shall be so constructed that only the fingerprints, unique identifying number, and the court of jurisdiction are made available to the central or local repository. The remainder of the card which bears the individual's identification and the duplicate unique number shall be provided to the court of jurisdiction. The appropriate portion of the juvenile fingerprint card shall be forwarded to the central repository and the courts without undue delay. The fingerprint information from the card shall be captured and stored in the automated fingerprint identification system operated by the central repository. The juvenile fingerprint card shall be stored in a secure location, separate from all other fingerprint cards. In the event the fingerprints from this card are found to match latent prints searched in the automated fingerprint identification system, the court of jurisdiction shall be so advised.

3. The prosecuting attorney of each county or the circuit attorney of a city not within a county shall notify the central repository on standard forms supplied by the highway patrol of all charges filed, including all those added subsequent to the filing of a criminal court case, and whether charges were not filed in criminal cases for which the central repository has a record of an arrest. All records forwarded to the central repository by prosecutors or circuit attorneys as required by sections 43.500 to 43.530 shall include the state offense cycle number of the offense, and the originating agency identifier number of the reporting prosecutor, using such numbers as assigned by the highway patrol.

4. The clerk of the courts of each county or city not within a county shall furnish the central repository, on standard forms supplied by the highway patrol, with all final dispositions of criminal cases for which the central repository has a record of an arrest or a record of fingerprints reported pursuant to subsections 6 and 7 of this section. Such information shall include, for each charge:

(1) All judgments of not guilty, acquittals on the ground of mental disease or defect excluding responsibility, judgments or pleas of guilty including the sentence, if any, or probation, if any, pronounced by the court, nolle pros, discharges, releases and dismissals in the trial court;

(2) Court orders filed with the clerk of the courts which reverse a reported conviction or vacate or modify a sentence;

(3) Judgments terminating or revoking a sentence to probation, supervision or conditional release and any resentencing after such revocation; and

(4) The offense cycle number of the offense, and the originating agency identifier number of the reporting court, using such numbers as assigned by the highway patrol.

5. The clerk of the courts of each county or city not within a county shall furnish court judgment and sentence documents and the state offense cycle number of the offense, which result in the commitment or assignment of an offender, to the jurisdiction of the department of corrections or the department of mental health if the person is committed pursuant to chapter 552, RSMo. This information shall be reported to the department of corrections or the department of mental health at the time of commitment or assignment. If the offender was already in the custody of the department of corrections or the department of mental health at the time of such subsequent conviction, the clerk shall furnish notice of such subsequent conviction to the appropriate department by certified mail, return receipt requested, within ten days of such disposition.

6. After the court pronounces sentence, including an order of supervision or an order of probation granted for any offense which is required by statute to be collected, maintained, or

disseminated by the central repository, or commits a person to the department of mental health pursuant to chapter 552, RSMo, the **[**prosecuting attorney or the circuit attorney of a city not within a county shall ask the**]** court **[**to**]** **shall** order a law enforcement agency to fingerprint immediately all persons appearing before the court to be sentenced or committed who have not previously been fingerprinted for the same case. **[**The court shall order the requested fingerprinting if it determines that any sentenced or committed person has not previously been fingerprinted for the same case.**]** The law enforcement agency shall submit such fingerprints to the central repository without undue delay.

7. The department of corrections and the department of mental health shall furnish the central repository with all information concerning the receipt, escape, execution, death, release, pardon, parole, commutation of sentence, granting of executive clemency, or discharge of an individual who has been sentenced to that department's custody for any offenses which are mandated by law to be collected, maintained or disseminated by the central repository. All records forwarded to the central repository by the department as required by sections 43.500 to 43.530 shall include the offense cycle number of the offense, and the originating agency identifier number of the department using such numbers as assigned by the highway patrol.

56.085. CRIMINAL INVESTIGATIONS, PROSECUTORS OR CIRCUIT ATTORNEYS MAY OBTAIN SUBPOENA FOR WITNESSES, RECORDS AND BOOKS. — In the course of a criminal investigation, the prosecuting or circuit attorney may request the circuit **or associate circuit** judge to issue a subpoena to any witness who may have information for the purpose of oral examination under oath to require the production of books, papers, records, or other material of any evidentiary nature at the office of the prosecuting or circuit attorney requesting the subpoena.

56.765. FUNDING — SURCHARGE TO BE COLLECTED IN CRIMINAL AND INFRACTION CASES, EXCEPTIONS — REGISTRATION FEES — FUNDS CREATED — AUDIT — USE OF FUND. — 1. A surcharge of one dollar shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, including an infraction; except that no such surcharge shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality.

2. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the state of Missouri and remitted to the director of revenue who shall deposit the amount collected pursuant to this section to the credit of the "Missouri Office of Prosecution Services Fund" which is hereby created in the state treasury. The moneys credited to the Missouri office of prosecution services fund from each county shall be used only for the purposes set forth in sections 56.750, 56.755, and 56.760**[**, and no moneys from the state's general revenue shall be used to fund staff positions for the office**]**. The state treasurer shall be the custodian of the fund, and shall make disbursements, as allowed by lawful appropriations. All earnings resulting from the investment of money in the fund shall be credited to the Missouri office of prosecution services fund. The Missouri office of prosecution services may collect a registration fee to pay for **[**actual**]** expenses included in sponsoring training conferences. The revenues and expenditures of the Missouri office of prosecution services shall be subject to an annual audit to be performed by the Missouri state auditor. The Missouri office of prosecution services shall also be subject to any other audit authorized and directed by the state auditor.

3. One-half of all moneys collected under the provisions of subsection 1 of this section shall be payable to the county treasurer of each county from which such funds were generated. The county treasurer shall deposit all of such funds into the county treasury in a separate fund to be used solely for the purpose of additional training for circuit and prosecuting attorneys and their staffs. If the funds collected and deposited by the county are not totally expended annually for the purposes set forth in this subsection, then the unexpended moneys shall remain in said fund and the balance shall be kept in said fund to accumulate from year to year, or at the request of

the circuit or prosecuting attorney, with the approval of the county commission or the appropriate governing body of the county or the city of St. Louis, and may be used to pay for expert witness fees, travel expenses incurred by victim/witnesses in case preparation and trial, for expenses incurred for changes of venue, for expenses incurred for special prosecutors, and for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that office.

4. There is hereby established in the state treasury the "Missouri Office of Prosecution Services Revolving Fund". Any moneys received by or on behalf of the Missouri office of prosecution services from registration fees, federal and state grants or any other source established in section 56.760 in connection with the purposes set forth in sections 56.750, 56.755, and 56.760 shall be deposited into the fund.

5. The moneys in the Missouri office of prosecution services revolving fund shall be kept separate and apart from all other moneys in the state treasury. The state treasurer shall administer the fund and shall disburse moneys from the fund to the Missouri office of prosecution services pursuant to appropriations for the purposes set forth in sections 56.750, 56.755 and 56.760.

6. Any unexpended balances remaining in the Missouri office of prosecution services fund and the Missouri office of prosecution services revolving fund at each biennium shall be exempt from the provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to general revenue.

57.130. PENALTIES AND FORFEITURES, COLLECTION OF — EXPIRATION DATE. — 1. The sheriffs of the several counties shall collect and account for all the fines, penalties, forfeitures and other sums of money, by whatever name designated, accruing to the state or any county by virtue of any order, judgment or decree of a court of record, provided that by court rule provision may be made for a court clerk to collect fines, penalties, forfeitures and other sums of money accruing to the state by virtue of any order, judgment or decree of the court.

2. The provisions of this section shall expire and be of no force and effect on and after July 1, **[**2002**]** **2007**.

67.133. COURT COSTS IN CIVIL AND CRIMINAL CASES, EXCEPTIONS — COLLECTION AND DEPOSIT PROCEDURE — DISTRIBUTION — COUNTY ENTITLED TO JUDGMENT, WHEN. — 1. A fee of ten dollars shall be assessed in all cases in which the defendant is convicted of **[**violating**]** **a nonfelony violation of** any provision of chapters 252, 301, 302, 304, 306, 307 and 390, RSMo, and any infraction otherwise provided by law, twenty-five dollars in all misdemeanor cases otherwise provided by law, and seventy-five dollars in all felony cases, in criminal cases including violations of any county ordinance or any violation of a criminal or traffic law of the state, except that no such fees shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. All fees collected under the provisions of this section shall be collected and disbursed in the manner provided by sections 488.010 to 488.020, RSMo, and payable to the county treasurer who shall deposit those funds in the county treasury.

2. Counties shall be entitled to a judgment in the amount of twenty-five percent of all sums collected on recognizances given to the state in criminal cases, which are or may become forfeited, if not more than five hundred dollars, and fifteen percent of all sums over five hundred dollars, to be paid out of the amount collected.

194.115. AUTOPSY — CONSENT REQUIRED — PENALTY FOR VIOLATION — AVAILABILITY OF REPORT, TO WHOM. — 1. Except when **ordered or** directed by a public officer**, court of record** or agency authorized by law to order an autopsy or postmortem examination, it is unlawful for any licensed physician and surgeon to perform an autopsy or postmortem examination upon the remains of any person without the consent of one of the following:

(1) The deceased, if in writing, and duly signed and acknowledged prior to his death; or

(2) A person designated by the deceased in a durable power of attorney that expressly refers to the giving of consent to an autopsy or postmortem examination; or

(3) The surviving spouse; or

(4) If the surviving spouse through injury, illness or mental capacity is incapable of giving his or her consent, or if the surviving spouse is unknown, or his or her address unknown or beyond the boundaries of the United States, or if he or she has been separated and living apart from the deceased, or if there is no surviving spouse, then any surviving child, parent, brother or sister, in the order named; or

(5) If no surviving child, parent, brother or sister can be contacted by telephone or telegraph, then any other relative, by blood or marriage; or

(6) If there are no relatives who assume the right to control the disposition of the remains, then any person, friend or friends who assume such responsibility.

2. If the surviving spouse, child, parent, brother or sister hereinabove mentioned is under the age of twenty-one years, but over the age of sixteen years, such minor shall be deemed of age for the purpose of granting the consent hereinabove required.

3. Any licensed physician and surgeon performing an autopsy or postmortem examination with the consent of any of the persons enumerated in subsection 1 of this section shall use his judgment as to the scope and extent to be performed, and shall be in no way liable for such action.

4. It is unlawful for any licensed physician, unless specifically authorized by law, to hold a postmortem examination on any unclaimed dead without the consent required by section 194.170.

5. Any person not a licensed physician performing an autopsy or any licensed physician performing an autopsy without the authorization herein required shall upon conviction be adjudged guilty of a misdemeanor, and subject to the penalty provided for in section 194.180.

6. If an autopsy is performed on a deceased patient and an autopsy report is prepared, such report shall be made available upon request to the personal representative or administrator of the estate of the deceased, the surviving spouse, any surviving child, parent, brother or sister of the deceased.

210.140. PRIVILEGED COMMUNICATION NOT RECOGNIZED, EXCEPTION. — Any legally recognized privileged communication, except that between attorney and client **or involving communications made to a minister or clergyperson**, shall not apply to situations involving known or suspected child abuse or neglect and shall not constitute grounds for failure to report as required or permitted by sections 210.110 to 210.165, to cooperate with the division in any of its activities pursuant to sections 210.110 to 210.165, or to give or accept evidence in any judicial proceeding relating to child abuse or neglect.

247.165. WATER SERVICE TO ANNEXED TERRITORY, AGREEMENT MAY BE DEVELOPED, PROCEDURE. — 1. Whenever all or any part of a territory located within a public water supply district organized pursuant to sections 247.010 to 247.220 is included by annexation within the corporate limits of a municipality, but is not receiving water service from such district or such municipality at the time of such annexation, the municipality and the board of directors of the district may, within six months after such annexation becomes effective, develop an agreement to provide water service to the annexed territory. Such an agreement may also be developed within six months after the effective date of this section for territory that was annexed between January 1, 1996, and the effective date of this section but was not receiving water service from such district or such municipality on the effective date of this section, except that such territory annexed in a county of the first classification without a charter form of government and with a population of more than sixty-three thousand eight hundred but less than seventy

thousand inhabitants must have been annexed between January 1, 1999, and the effective date of this section. For the purposes of this section, "not receiving water service" shall mean that no water is being sold within the annexed territory by such district or municipality. If the municipality and district reach an agreement that detaches any territory from such district, the agreement shall be submitted to the circuit court originally incorporating such district, and the court shall make an order and judgment detaching the territory described in the agreement from the remainder of the district and stating the boundary lines of the district after such detachment. The court shall also make any changes in subdistrict boundary lines it deems necessary to meet the requirements of sections 247.110 to 247.227. Such subdistrict lines shall not become effective until the next election after the effective date of the agreement. At such time that the court's order and judgment becomes final, the clerk of the circuit court shall file certified copies of such order and judgment with the secretary of state and with the recorder of deeds and the county clerk of the county or counties in which the district is located. If an agreement is developed between a municipality and a water district pursuant to this subsection, subsections 2 to 8 of this section shall not apply to such agreement.

2. In any case in which the board of directors of such district and such municipality cannot reach such an agreement, an application may be made by the district or the municipality to the circuit court originally incorporating such district, requesting that three commissioners develop such an agreement. Such application shall include the name of one commissioner appointed by the applying party. The second party shall appoint one commissioner within thirty days of the service of the application upon the second party. If the second party fails to appoint a commissioner within such time period, the court shall appoint a commissioner on behalf of the second party. Such two named commissioners may agree to appoint a third disinterested commissioner within thirty days after the appointment of the second commissioner. In any case in which such two commissioners cannot agree on or fail to make the appointment of the third disinterested commissioner within thirty days after the appointment of the second commissioner, the court shall appoint the third disinterested commissioner.

3. Upon the filing of such application and the appointment of three such commissioners, the court shall set a time for one or more hearings and shall order a public notice including the nature of the application, the annexed area affected, the names of the commissioners, and the time and place of such hearings, to be published for three weeks consecutively in a newspaper published in the county in which the application is pending, the last publication to be not more than seven days before the date set for the first hearing.

4. The commissioners shall develop an agreement between the district and the municipality to provide water service to the annexed territory. In developing the agreement, the commissioners shall consider information presented to them at hearings and any other information at their disposal including, but not limited to:

(1) The estimated future loss of revenue and costs for the water district related to the agreement;

(2) The amount of indebtedness of the water district within the annexed territory;

(3) Any contractual obligations of the water district within the annexed area; and

(4) The effect of the agreement on the water rates of the district.

Such agreement shall also include a recommendation for the apportionment of court costs, including reasonable compensation for the commissioners, between the municipality and the water district.

5. If the court finds that the agreement provides for necessary water service in the annexed territory, then such agreement shall be fully effective upon approval by the court. The court shall also review the recommended apportionment of court costs and the reasonable compensation for the commissioners and affirm or modify such recommendations.

6. The order and judgment of the court shall be subject to appeal as provided by law.

7. If the court approves a detachment as part of the territorial agreement, it shall make its order and judgment detaching the territory described in the petition from the remainder of the district and stating the boundary lines of the district after such detachment. The court shall also make any changes in subdistrict boundary lines it deems necessary to meet the requirements of sections 247.110 to 247.227. Any subdistrict lines shall not become effective until the next annual regular election.

8. At such time that the court's order and judgment becomes final, the clerk of the circuit court shall file certified copies of such order and judgment with the secretary of state and with the recorder of deeds and the county clerk of the county or counties in which the district is located.

247.171. PROPORTION OF SUM OF ALL OUTSTANDING BONDS AND DEBTS, CALCULATION. — The proportion of the sum of all outstanding bonds and debt, with interest thereon, that is required to be paid to the water supply district, pursuant to subsection 1 of section 247.031, and subdivision (5) of subsection 1 of section 247.170, shall be the same as the proportion of the assessed valuation of the real and tangible personal property within the area sought to be detached and excluded bears to the assessed valuation of all of the real and tangible personal property within the entire area of the water supply district.

287.610. ADMINISTRATIVE LAW JUDGES, APPOINTMENT AND QUALIFICATION — ANNUAL EVALUATIONS — REMOVAL, REVIEW COMMITTEE, PROCESS — JURISDICTION, POWERS — CONTINUING TRAINING REQUIRED — RULES. — 1. The division may appoint such number of administrative law judges as it may find necessary, but not exceeding twenty-five in number beginning January 1, 1999, with one additional appointment authorized as of July 1, 2000, and one additional appointment authorized in each succeeding year thereafter until and including the year 2004, for a maximum of thirty authorized administrative law judges. Appropriations for any additional appointment shall be based upon necessity, measured by the requirements and needs of each division office. Administrative law judges shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or do law business and shall devote their whole time to the duties of their office. Any administrative law judge may be discharged or removed only by the governor pursuant to an evaluation and recommendation by the administrative law judge review committee, hereinafter referred to as "the committee", of the judge's conduct, performance and productivity.

2. The division shall require and perform annual evaluations of an administrative law judge, associate administrative law judge and legal advisor's conduct, performance and productivity based upon written standards established by rule. The division, by rule, shall establish the written standards on or before January 1, 1999.

(1) After an evaluation by the division, any administrative law judge, associate administrative law judge or legal advisor who has received an unsatisfactory evaluation in any of the three categories of conduct, performance or productivity, may appeal the evaluation to the committee.

(2) The division director **[**may**]** **shall** refer an unsatisfactory evaluation of any administrative law judge, associate administrative law judge or legal advisor to the committee.

(3) When a written, signed complaint is made against an administrative law judge, associate administrative law judge or legal advisor, it shall be referred to the director of the division for a determination of merit. When the director finds the complaint has merit, it shall be referred to the committee for investigation and review.

3. The administrative law judge review committee shall be composed of one administrative law judge, who shall act as a peer judge on the committee and shall be domiciled in a division office other than that of the judge being reviewed, one employee representative and one

employer representative, neither of whom shall have any direct or indirect employment or financial connection with a workers' compensation insurance company, claims adjustment company, health care provider nor be a practicing workers' compensation attorney. The employee representative and employer representative shall have a working knowledge of workers' compensation. The employee and employer representative shall serve for four-year staggered terms and they shall be appointed by the governor. The initial employee representative shall be appointed for a two-year term. The administrative law judge who acts as a peer judge shall be appointed by the chairman of the labor and industrial relations commission and shall not serve on any two consecutive reviews conducted by the committee. Chairmanship of the committee shall rotate between the employee representative and the employer representative every other year. Staffing for the administrative review committee shall be provided, as needed, by the director of the department of labor and industrial relations and shall be funded from the workers' compensation fund. The committee shall conduct a hearing as part of any review of a referral or appeal made according to subsection 2 of this section.

4. The committee shall determine within thirty days whether an investigation shall be conducted for a referral made pursuant to subdivision (3) of subsection 2 of this section. The committee shall make a final referral to the governor pursuant to subsection 1 of this section within two hundred seventy days of the receipt of a referral or appeal.

5. The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction upon any review hearing, either in the way of an appeal from an original hearing or by way of reopening any prior award, except to correct a clerical error in an award or settlement if the correction is made by the administrative law judge within twenty days of the original award or settlement. The labor and industrial relations commission may remand any decision of an administrative law judge for a more complete finding of facts. The commission may also correct a clerical error in awards or settlements within thirty days of its final award. With respect to original hearings, the administrative law judges shall have such jurisdiction and powers as are vested in the division of workers' compensation under other sections of this chapter, and wherever in this chapter the word "commission", "commissioners" or "division" is used in respect to any original hearing, those terms shall mean the administrative law judges appointed under this section. When a hearing is necessary upon any claim, the division shall assign an administrative law judge to such hearing. Any administrative law judge shall have power to approve contracts of settlement, as provided by section 287.390, between the parties to any compensation claim or dispute under this chapter pending before the division of workers' compensation. Any award by an administrative law judge upon an original hearing shall have the same force and effect, shall be enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and industrial relations commission, and shall be subject to review as provided by section 287.480.

6. Any of the administrative law judges employed pursuant to this section may be assigned on a temporary basis to the branch offices as necessary in order to ensure the proper administration of this chapter.

7. All administrative law judges and legal advisors shall be required to participate in, on a continuing basis, specific training that shall pertain to those elements of knowledge and procedure necessary for the efficient and competent performance of the administrative law judges' and legal advisors' required duties and responsibilities. Such training requirements shall be established by the division subject to appropriations and shall include training in medical determinations and records, mediation and legal issues pertaining to workers' compensation adjudication. Such training may be credited toward any continuing legal education requirements.

8. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

303.025. DUTY TO MAINTAIN FINANCIAL RESPONSIBILITY, MISDEMEANOR PENALTY FOR FAILURE TO MAINTAIN — EXCEPTION, METHODS — COURT TO NOTIFY DEPARTMENT OF REVENUE, ADDITIONAL PUNISHMENT, RIGHT OF APPEAL. — 1. No owner of a motor vehicle registered in this state, or required to be registered in this state, shall operate, register or maintain registration of a motor vehicle, or permit another person to operate such vehicle, unless the owner maintains the financial responsibility which conforms to the requirements of the laws of this state. Furthermore, no person shall operate a motor vehicle owned by another with the knowledge that the owner has not maintained financial responsibility unless such person has financial responsibility which covers the person's operation of the other's vehicle; however, no owner shall be in violation of this subsection if he or she fails to maintain financial responsibility on a motor vehicle which is inoperable or being stored and not in operation. The director may prescribe rules and regulations for the implementation of this section.

2. A motor vehicle owner shall maintain the owner's financial responsibility in a manner provided for in section 303.160, or with a motor vehicle liability policy which conforms to the requirements of the laws of this state.

3. Any person who violates this section is guilty of a class C misdemeanor. However, no person shall be found guilty of violating this section if the operator demonstrates to the court that he or she met the financial responsibility requirements of this section at the time the peace officer, commercial vehicle enforcement officer or commercial vehicle inspector wrote the citation. In addition to any other authorized punishment, the court shall notify the director of revenue of any person convicted pursuant to this section and shall do one of the following:

(1) Enter an order suspending the driving privilege as of the date of the court order. If the court orders the suspension of the driving privilege, the court shall require the defendant to surrender to it any driver's license then held by such person. The length of the suspension shall be as prescribed in subsection 2 of section 303.042. The court shall forward to the director of revenue the order of suspension of driving privilege and any license surrendered within ten days;

(2) Forward the record of the conviction for an assessment of four points; or

(3) In lieu of an assessment of points, render an order of supervision as provided in section 302.303, RSMo. An order of supervision shall not be used in lieu of points more than one time in any thirty-six-month period. Every court having jurisdiction pursuant to the provisions of this section shall forward a record of conviction **[**or the order of supervision to the department of revenue within ten days**]** **to the Missouri state highway patrol, or at the written direction of the Missouri state highway patrol, to the department of revenue, in a manner approved by the director of the department of public safety**. The director shall establish procedures for the record keeping and administration of this section.

4. Nothing in sections 303.010 to 303.050, 303.060, 303.140, 303.220, 303.290, 303.330 and 303.370 shall be construed as prohibiting the department of insurance from approving or authorizing those exclusions and limitations which are contained in automobile liability insurance policies and the uninsured motorist provisions of automobile liability insurance policies.

5. If a court enters an order of suspension, the offender may appeal such order directly pursuant to chapter 512, RSMo, and the provisions of section 302.311, RSMo, shall not apply.

303.041. FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY — NOTICE, PROCEDURE, CONTENTS — SUSPENSION OF LICENSE AND REGISTRATION — REQUEST FOR HEARING, RIGHT, EFFECT — SUBSEQUENT ACQUISITION OF FINANCIAL RESPONSIBILITY, EFFECT — DURATION OF SUSPENSION, FEE. — 1. If the director determines that as a result of a verification sample or accident report that the owner of a motor vehicle has not maintained financial responsibility, or if the director determines as a result of an order of **[**court**]** supervision that the operator of a motor vehicle has not maintained the financial responsibility as required in this chapter, the director shall thirty-three days after mailing notice, suspend the driving privilege of the owner or operator and/or the registration of the vehicle failing to meet such requirement. The notice of suspension shall be mailed to the person at the last known address shown on the

department's records. The notice of suspension is deemed received three days after mailing. The notice of suspension shall clearly specify the reason and statutory grounds for the suspension and the effective date of the suspension, the right of the person to request a hearing, the procedure for requesting a hearing, and the date by which that request for a hearing must be made. If the request for a hearing is received by the department prior to the effective date of the suspension, the effective date of the suspension will be stayed until a final order is issued following the hearing.

2. Neither the fact that subsequent to the date of verification or conviction, the owner acquired the required liability insurance policy nor the fact that the owner terminated ownership of the motor vehicle, shall have any bearing upon the director's decision to suspend. Until it is terminated, the suspension shall remain in force after the registration is renewed or a new registration is acquired for the motor vehicle. The suspension also shall apply to any motor vehicle to which the owner transfers the registration. Effective January 1, 2000, the department shall not extend any suspension for failure to pay a delinquent late surrender fee pursuant to this subsection.

[303.041. FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY — NOTICE, PROCEDURE, CONTENTS — SUSPENSION OF LICENSE AND REGISTRATION — REQUEST FOR HEARING, RIGHT, EFFECT — SUBSEQUENT ACQUISITION OF FINANCIAL RESPONSIBILITY, EFFECT — DURATION OF SUSPENSION, FEE. — 1. If the director determines that as a result of a verification sample or accident report that the owner of a motor vehicle has not maintained financial responsibility, or if the director determines as a result of an order of court supervision that the operator of a motor vehicle has not maintained the financial responsibility as required in this chapter, the director shall thirty-three days after mailing notice, suspend the driving privilege of the operator and/or the registration of the vehicle failing to meet such requirement. The notice of suspension shall be mailed to the person at the last known address shown on the department's records. The notice of suspension is deemed received three days after mailing. The notice of suspension shall clearly specify the reason and statutory grounds for the suspension and the effective date of the suspension, the right of the person to request a hearing, the procedure for requesting a hearing, and the date by which that request for a hearing must be made. If the request for a hearing is received by the department prior to the effective date of the suspension, the effective date of the suspension will be stayed until a final order is issued following the hearing.

2. Neither the fact that subsequent to the date of verification or conviction, the owner acquired the required liability insurance policy nor the fact that the owner terminated ownership of the motor vehicle, shall have any bearing upon the director's decision to suspend. Until it is terminated, the suspension shall remain in force after the registration is renewed or a new registration is acquired for the motor vehicle. The suspension also shall apply to any motor vehicle to which the owner transfers the registration. Effective January 1, 2000, the department shall not extend any suspension for failure to pay a delinquent late surrender fee pursuant to this subsection.**]**

374.700. DEFINITIONS. — As used in sections 374.700 to 374.775, the following terms shall mean:

(1) "Bail bond agent", a surety agent or an agent of a property bail bondsman who is duly licensed under the provisions of sections 374.700 to 374.775, is employed by and is working under the authority of a licensed general bail bond agent;

(2) "Department", the department of insurance of the state of Missouri;

(3) "Director", the director of the department of insurance;

(4) "General bail bond agent", a surety agent or a property bail bondsman, as defined in sections 374.700 to 374.775, who is licensed in accordance with sections 374.700 to 374.775 and who devotes at least fifty percent of his working time to the bail bond business in this state;

(5) "Property bail bondsman", a person who pledges United States currency, United States postal money orders or cashier's checks or other property as security for a bail bond in connection with a judicial proceeding, and who receives or is promised therefor money or other things of value;

(6) "Surety bail bond agent", any person appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings, and who receives or is promised money or other things of value therefor**;**

(7) "Surety recovery agent", a person not performing the duties of a sworn peace officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a bail bond agreement, excluding a bail bond agent or general bail bond agent.

374.757. NOTIFICATION BY AGENT OF INTENTION TO APPREHEND — LOCAL LAW ENFORCEMENT MAY ACCOMPANY AGENT — VIOLATIONS, PENALTIES. — 1. Any agent licensed by sections 374.700 to 374.775 who intends to apprehend any person in this state shall inform law enforcement authorities in the city or county in which such agent intends such apprehension, before attempting such apprehension. Such agent shall present to the local law enforcement authorities a certified copy of the bond and all other appropriate paperwork identifying the principal and the person to be apprehended. Local law enforcement may accompany the agent. Failure of any agent to whom this section applies to comply with the provisions of this section shall be a class A misdemeanor for the first violation and a class D felony for subsequent violations; and shall also be a violation of section 374.755 and may in addition be punished pursuant to that section.

2. The surety recovery agent shall inform the local law enforcement in the county or city where such agent is planning to enter a residence. Such agent shall have a certified copy of the bond and all appropriate paperwork to identify the principal. Local law enforcement, when notified, may accompany the surety recovery agent to that location to keep the peace if an active warrant is effective for a felony or misdemeanor. If a warrant is not active, the local law enforcement officers may accompany the surety recovery agent to such location. Failure to report to the local law enforcement agency is a class A misdemeanor. For any subsequent violations, failure to report to the local law enforcement agency is a class D felony.

386.515. EXCLUSIVITY OF CIRCUIT COURT REVIEW PROCEDURE — REHEARING, PROCEDURE. — Prior to August 28, 2001, in proceedings before the Missouri public service commission, consistent with the decision of the supreme court of Missouri in State ex rel. Anderson Motor Service Co., Inc. v. Public Service Commission, 97 S.W.2d 116 (Mo. banc 1936) the review procedure provided for in section 386.510 is exclusive to any other procedure. An application for rehearing is required to be served on all parties and is a prerequisite to the filing of an application for writ of review. The application for rehearing puts the parties to the proceeding before the commission on notice that a writ of review can follow and any such review may proceed without formal notification or summons to said parties. On and after August 28, 2001, the review procedure provided for in section 386.510 continues to be exclusive except that a copy of any such writ of review shall be provided to each party to the proceeding before the commission, or his or her attorney of record, by hand delivery or by registered mail, and proof of such delivery or mailing shall be filed in the case as provided by subsection 2 of section 536.110, RSMo.

452.556. HANDBOOK, CONTENTS, AVAILABILITY. — 1. The state courts administrator shall create a handbook or be responsible for the approval of a handbook outlining the following:

(1) What is included in a parenting plan;

(2) The benefits of the parties agreeing to a parenting plan which outlines education, custody and cooperation between parents;

(3) The benefits of alternative dispute resolution;

(4) The pro se family access motion for enforcement of custody or temporary physical custody;

(5) The underlying assumptions for supreme court rules relating to child support; and

(6) A party's duties and responsibilities pursuant to section 452.377, including the possible consequences of not complying with section 452.377. The handbooks shall be distributed to each court and shall be available in an alternative format, including Braille, large print, or electronic or audio format upon request by a person with a disability, as defined by the federal Americans with Disabilities Act.

2. Each court shall mail a copy of the handbook developed pursuant to subsection 1 of this section to each party in a dissolution or legal separation action filed pursuant to section 452.310, or any proceeding in modification thereof, where minor children are involved**, or may provide the petitioner with a copy of the handbook at the time the petition is filed and direct that a copy of the handbook be served along with the petition and summons upon the respondent**.

3. The court shall make the handbook available to interested state agencies and members of the public.

455.040. HEARINGS, WHEN — DURATION OF ORDERS, RENEWAL, REQUIREMENTS — COPIES OF ORDERS TO BE GIVEN, VALIDITY — DUTIES OF LAW ENFORCEMENT AGENCY — INFORMATION MAY BE ENTERED IN MULES. — 1. Not later than fifteen days after the filing of a petition pursuant to sections 455.010 to 455.085 a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the petitioner has proved the allegation of abuse or stalking by a preponderance of the evidence, the court shall issue a full order of protection for a period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year. Upon motion by the petitioner, and after a hearing by the court, the full order of protection may be renewed for a period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year from the expiration date of the originally issued full order of protection. If for good cause a hearing cannot be held on the motion to renew the full order of protection prior to the expiration date of the originally issued full order of protection, an ex parte order of protection may be issued until a hearing is held on the motion. Upon motion by the petitioner, and after a hearing by the court, the second full order of protection may be renewed for an additional period of time the court deems appropriate, except that the protective order shall be valid for at least one hundred eighty days and not more than one year. For purposes of this subsection, a finding by the court of a subsequent act of abuse is not required for a renewal order of protection.

2. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition and any ex parte order of protection to be served upon the respondent as provided by law or by any sheriff or police officer at least three days prior to such hearing. Such notice shall be served at the earliest time, and service of such notice shall take priority over service in other actions, except those of a similar emergency nature. The court shall cause a copy of any full order of protection to be served upon or mailed by certified mail to the respondent at the respondent's last known address. Failure to serve or mail a copy of the full order of protection to the respondent shall not affect the validity or enforceability of a full order of protection.

3. A copy of any order of protection granted pursuant to sections 455.010 to 455.085 shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction where the petitioner resides. The clerk shall also issue a copy of any order of protection to the local law enforcement agency responsible for maintaining the Missouri uniform law enforcement system or any other comparable law enforcement system the same day the order is granted. The law

enforcement agency responsible for maintaining MULES shall enter information contained in the order for purposes of verification within twenty-four hours from the time the order is granted. A notice of expiration or of termination of any order of protection shall be issued to the local law enforcement agency and to the law enforcement agency responsible for maintaining MULES or any other comparable law enforcement system. The law enforcement agency responsible for maintaining the applicable law enforcement system shall enter such information in the system. **The information contained in an order of protection may be entered in the Missouri uniform law enforcement system or comparable law enforcement system using a direct automated data transfer from the court automated system to the law enforcement system.**

476.010. COURTS OF RECORD. — The supreme court of the state of Missouri, the court of appeals, **[**the circuit divisions of**]** **and** the circuit courts, **[**and any other division of the circuit courts keeping a record of the proceedings before the court,**]** shall be courts of record, and shall keep just and faithful records of their proceedings. Notwithstanding the foregoing, municipal divisions of the circuit courts shall not be considered courts of record, regardless of whether or not a verbatim record of proceedings before the **[**court**] division** is kept.

476.365. CERTIFICATION OF OFFICIAL COURT REPORTERS REQUIRED. — 1. No judge of any court in this state shall appoint an official court reporter who is not a court reporter certified by the board of certified court reporter examiners, as provided in Supreme Court Rule 14. In the absence of an official court reporter due to illness, physical incapacity, death, dismissal or resignation, a judge may appoint a temporary court reporter, but such temporary court reporter shall not serve more than six months without obtaining a certificate pursuant to the provisions of Supreme Court Rule 14.

2. No testimony taken in this state by deposition shall be given in any court in this state, and no record on appeal from an administrative agency of this state shall include testimony taken in this state by deposition, unless the deposition is prepared and certified by a certified court reporter, except as provided in Supreme Court Rule 57.03(c).

3. Deposition testimony taken outside the state shall be deemed to be in conformity with this section if the testimony was prepared and certified by a court reporter authorized to prepare and certify deposition testimony in the jurisdiction in which the testimony was taken.

4. This section shall not apply to depositions taken in this state in connection with cases not pending in a Missouri state court or administrative agency at the time the deposition was taken.

478.610. CIRCUIT NO. 13, NUMBER OF JUDGES, DIVISIONS — WHEN JUDGES ELECTED — ADDITIONAL ASSOCIATE CIRCUIT JUDGE FOR BOONE COUNTY, WHEN. — 1. There shall be three circuit judges in the thirteenth judicial circuit consisting of the counties of Boone and Callaway. These judges shall sit in divisions numbered one, two and three.

2. The circuit judge in division two shall be elected in 1980. The circuit judges in divisions one and three shall be elected in 1982.

3. The authority for a majority of judges of the thirteenth judicial circuit to appoint or retain a commissioner pursuant to section 478.003 shall expire August 28, 2001. As of such date, there shall be one additional associate circuit judge position in Boone County than is provided pursuant to section 478.320.

479.020. MUNICIPAL JUDGES, SELECTION, TENURE, JURISDICTION, QUALIFICATIONS, COURSE OF INSTRUCTION. — 1. Any city, town or village, including those operating under a constitutional or special charter, may, and cities with a population of four hundred thousand or more shall, provide by ordinance or charter for the selection, tenure and compensation of a municipal judge or judges consistent with the provisions of this chapter who shall have original

jurisdiction to hear and determine all violations against the ordinances of the municipality. The method of selection of municipal judges shall be provided by charter or ordinance. Each municipal judge shall be selected for a term of not less than two years as provided by charter or ordinance.

2. Except where prohibited by charter or ordinance, the municipal judge may be a part-time judge and may serve as municipal judge in more than one municipality.

3. No person shall serve as a municipal judge of any municipality with a population of seven thousand five hundred or more or of any municipality in a county of the first class with a charter form of government unless the person is licensed to practice law in this state unless, prior to January 2, 1979, such person has served as municipal judge of that same municipality for at least **[**three**] two** years.

4. Notwithstanding any other statute, a municipal judge need not be a resident of the municipality or of the circuit in which the municipal judge serves except where ordinance or charter provides otherwise. Municipal judges shall be residents of Missouri.

5. Judges selected under the provisions of this section shall be municipal judges of the circuit court and shall be divisions of the circuit court of the circuit in which the municipality, or major geographical portion thereof, is located. The judges of these municipal divisions shall be subject to the rules of the circuit court which are not inconsistent with the rules of the supreme court. The presiding judge of the circuit shall have general administrative authority over the judges and court personnel of the municipal divisions within the circuit. Notwithstanding the foregoing provisions of this subsection, in any city with a population of over four hundred thousand with full-time municipal judges who are subject to a plan of merit selection and retention, such municipal judges and court personnel of the municipal divisions shall not be subject to court management and case docketing in the municipal divisions by the presiding judge or the rules of the circuit court of which the municipal divisions are a part.

6. No municipal judge shall hold any other office in the municipality which the municipal judge serves as judge. The compensation of any municipal judge and other court personnel shall not be dependent in any way upon the number of cases tried, the number of guilty verdicts reached or the amount of fines imposed or collected.

7. Municipal judges shall be at least twenty-one years of age. No person shall serve as municipal judge after that person has reached that person's seventy-fifth birthday.

8. Within six months after selection for the position, each municipal judge who is not licensed to practice law in this state shall satisfactorily complete the course of instruction for municipal judges prescribed by the supreme court. The state courts administrator shall certify to the supreme court the names of those judges who satisfactorily complete the prescribed course. If a municipal judge fails to complete satisfactorily the prescribed course within six months after the municipal judge's selection as municipal judge, the municipal judge's office shall be deemed vacant and such person shall not thereafter be permitted to serve as a municipal judge, nor shall any compensation thereafter be paid to such person for serving as municipal judge.

479.150. TRIAL BY JURY, CERTIFICATION FOR ASSIGNMENT — EXCEPTION, SPRINGFIELD MUNICIPAL COURT, WHEN, PROCEDURE, COSTS. — 1. In any municipality, whenever a defendant accused of a violation of a municipal ordinance has a right to a trial by jury and demands such trial by jury, except as provided in subsection 2 of this section, the municipal judge shall certify the case for assignment **[**in the manner provided in subsection 2 of section 517.520, RSMo**]**.

2. Any municipality requiring by ordinance that the municipal judge be a licensed attorney and which has a population in excess of one hundred thousand persons which is located in a county of the first class not having a charter form of government and which does not adjoin another first class county may elect by passage of an appropriate municipal ordinance to hear jury cases before the municipal court; provided, such jury cases are heard in accordance with the following procedures:

(1) Cases shall be heard with a record being made as required in jury cases before the associate circuit court and the trial shall be conducted and the jury selected in accordance with procedures applicable before circuit courts;

(2) In any case tried with a jury in a municipal court under provisions of this subsection, appeals may be had upon the record to the appropriate state appellate court, and the record for appeal in such cases shall be prepared in accordance with the same rules prescribed by the supreme court for trials on the record before associate circuit courts;

(3) The costs of equipment or stenographic services for jury trials a municipality should elect to hold under this section shall be paid by the municipality, except where the supreme court has by rule provided for reimbursement by the defendant for the cost of transcription, and any person who requests a jury trial shall be responsible for all costs incurred in the securing of a jury if such person thereafter waives his right to a jury trial;

(4) The failure to request a jury trial while the case is pending before the municipal court shall be deemed a waiver of the right to a jury trial and after such jury trial there shall be no right to a trial de novo in circuit court;

(5) If the municipal judge is disqualified, the rules for appointment of another municipal judge of the city to hear such cases shall apply; provided, however, that in the event there is no other municipal judge qualified to hear the case, the case shall be certified for assignment **[**in the manner provided in subsection 2 of section 517.520, RSMo**]**.

482.330. RESTRICTIONS ON FILING OF CLAIMS — STATEMENT REQUIRED OF PLAINTIFF — COUNTERCLAIM NOT PROHIBITED — SUIT MAY BE BROUGHT, WHERE. — 1. No claim may be filed or prosecuted in small claims court by a party who:

(1) Is an assignee of the claim; or

(2) Has filed more than eight other claims in the Missouri small claims courts during the current calendar year. If the court finds that a party has filed **[**one**]** more **[**claim**] claims** than **[**is**] are** permitted by this section, the court **[**may dismiss the petition with prejudice. If the court finds that a party has filed two more claims than is permitted by this section, the court**]** shall dismiss **[**with**] the claim without** prejudice.

2. At the time of filing an action in small claims court, a plaintiff shall sign a statement that he is not the assignee of the claim sued on and that he has not filed more than **[**ten**] eight** other claims in the Missouri small claims courts during the current calendar year.

3. Nothing in this section shall prohibit the filing or prosecution of a counterclaim growing out of the same transaction or occurrence.

4. No claim may be filed in a small claims court unless:

(1) At least one defendant is a resident of the county in which the court is located or at least one of the plaintiffs is a resident of the county in which the court is located and at least one defendant may be found in said county; or

(2) The facts giving rise to the cause of action took place within the county in which the court is located.

483.500. FEES OF THE CLERKS OF THE SUPREME COURT AND COURT OF APPEALS — COLLECTION. — 1. **[**Clerks of the supreme court and court of appeals shall severally be allowed and paid by the**] An** appellant or plaintiff in error **shall pay** court costs in an amount determined pursuant to **[**section 514.015**] sections 488.010 to 488.020**, RSMo; provided, that nothing herein shall be construed to apply to proceedings when costs are waived or are to be paid by the state, county or municipality.

2. **[**If the judgment of the supreme court or court of appeals is in favor of the appellant or plaintiff in error, the clerks shall assess the fee provided herein in favor of the appellant or plaintiff in error which may be collected in the manner provided by section 514.460, RSMo.

3. Such clerks**] The clerk of the court in which the notice of appeal is initially filed** shall collect **and disburse** court costs **[**for other services in such amounts as are**]** determined pursuant

to [section 514.015] **this section in the manner provided by sections 488.010 to 488.020**, RSMo**, and such court costs shall be payable to the director of revenue for deposit to the general revenue fund**.

488.426. DEPOSIT REQUIRED IN CIVIL ACTIONS — EXEMPTIONS — SURCHARGE TO REMAIN IN EFFECT. — **1.** The judges of the circuit court, en banc, in any circuit in this state**[**, by rule of court adopted prior to January 1, 1997,**]** may require any party filing a civil case in the circuit court, at the time of filing the suit, to deposit with the clerk of the court a surcharge **[**in the amount of not to exceed fifteen dollars**]** in addition to all other deposits required by law or court rule. Sections 488.426 to 488.432 shall not apply to proceedings when costs are waived or are to be paid by the county or state or any city.

2. The surcharge in effect on August 28, 2001, shall remain in effect until changed by the circuit court. The circuit court in any circuit, except the circuit court in Jackson County may change the fee to any amount not to exceed fifteen dollars. The circuit court in Jackson County may change the fee to any amount not to exceed twenty dollars. A change in the fee shall become effective and remain in effect until further changed beginning on January first if the office of state courts administrator is notified of the proposed change not later than the preceding September first.

3. Sections 488.426 to 488.432 shall not apply to proceeding when costs are waived or are paid by the county or state or any city.

488.429. FUND PAID TO TREASURER DESIGNATED BY CIRCUIT JUDGE — USE OF FUND FOR LAW LIBRARY. — Moneys collected pursuant to section 488.426 shall be payable to the **[**circuit judge or**]** judges of the circuit court**, en banc,** of the county from which such surcharges were collected, or to such person as is designated by local circuit court rule as treasurer of said fund, and said fund shall be applied and expended under the direction and order of the **[**circuit judge or**]** judges of the circuit court**, en banc,** of any such county for the maintenance and upkeep of the law library maintained by the bar association in any such county, or such other law library in any such county as may be designated by the **[**circuit judge or**]** judges of the circuit court**, en banc,** of any such county; provided, that the **[**judge or**]** judges of the circuit **court, en banc,** of any such county, and the officers of all courts of record of any such county, shall be entitled at all reasonable times to use the library to the support of which said funds are applied.

488.447. COURT RESTORATION FUND — SPECIAL SURCHARGE IN CIVIL CASES TO BE DEPOSITED IN FUND — EXEMPT CASES — EXPIRES WHEN. — 1. The circuit and associate circuit judges of the circuit court in any city not within a county shall require any party filing a civil case in the circuit court, at the time of filing suit, to deposit with the circuit clerk a surcharge in the amount of **[**thirty-five**] forty-five** dollars, in addition to all other court costs now or hereafter required by law or court rule, and no summons shall be issued until such surcharge has been paid. This section shall not apply to proceedings when costs are waived or paid by the state, county or municipality.

2. Such funds shall be payable to the treasury of any city not within a county to be credited to a courthouse restoration fund, which shall bear interest, to be used by any city not within a county only for the restoration, maintenance and upkeep of the courthouses; provided, that the courthouse restoration fund may be pledged to directly or indirectly secure bonds to fund such costs. All funds collected pursuant to this section before August 28, 1995, shall be credited to the courthouse restoration fund provided for in this section, to be used pursuant to the provisions of this section.

3. This section shall expire on August 28, 2033.

488.607. ADDITIONAL SURCHARGES AUTHORIZED FOR MUNICIPAL AND ASSOCIATE CIRCUIT COURTS FOR CITIES AND TOWNS HAVING SHELTERS FOR VICTIMS OF DOMESTIC

VIOLENCE, AMOUNT, EXCEPTIONS. — In addition to all other court costs for county or municipal ordinance violations, any county or any city having a shelter for victims of domestic violence established pursuant to sections 455.200 to 455.230, RSMo, or any municipality within a county which has such shelter, or any county or municipality whose residents are victims of domestic violence and are admitted to such shelters may, by order or ordinance **[**to be effective prior to January 1, 2000,**]** provide for an additional surcharge in the amount of two dollars per case for each criminal case **[**including**]** **and each** county or municipal ordinance violation case filed before a municipal division judge or associate circuit judge. No surcharge shall be collected in any proceeding when the proceeding or defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. Such surcharges collected by municipal clerks in municipalities electing or required to have violations of municipal ordinances tried before a municipal judge pursuant to section 479.020, RSMo, or to employ judicial personnel pursuant to section 479.060, RSMo, shall be disbursed to the city at least monthly, and such surcharges collected by circuit court clerks shall be collected and disbursed as provided by sections 488.010 to 488.020. Such fees shall be payable to the city or county wherein such fees originated. The county or city shall use such moneys only for the purpose of providing operating expenses for shelters for battered persons as defined in sections 455.200 to 455.230, RSMo.

488.5332. SURCHARGE IN CRIMINAL CASES, WHEN, EXCEPTIONS — PAYMENT TO INDEPENDENT LIVING CENTER FUND. — In all criminal cases including violations of any county ordinance or any violation of criminal or traffic laws of this state, including an infraction, there shall be assessed as costs a surcharge in the amount of **[**fifty cents**]** **one dollar**. No such surcharge shall be collected in any proceeding involving a violation of an ordinance or state law when the proceeding or defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. Such surcharge shall be collected and disbursed by the clerk of the court as provided by sections 488.010 to 488.020. Moneys collected from this surcharge shall be payable to the independent living center fund created in section 178.653, RSMo.

488.5336. COURT COSTS MAY BE INCREASED, AMOUNT, HOW, EXCEPTIONS, DEPOSIT — ADDITIONAL ASSESSMENT — USE OF FUNDS — AMOUNT OF REIMBURSEMENT. — 1. A surcharge of two dollars may be assessed as costs in each criminal case involving violations of any county ordinance or a violation of any criminal or traffic laws of the state, including infractions, or violations of municipal ordinances, provided that no such fee shall be collected in any proceeding in any court when the proceeding or defendant has been dismissed by the court or when costs are to be paid by the state, county or municipality. For violations of the general criminal laws of the state or county ordinances, no such surcharge shall be collected unless it is authorized by the county government where the violation occurred. For violations of municipal ordinances, no such surcharge shall be collected unless it is authorized by the municipal government where the violation occurred. **[**Any such surcharge shall be authorized by the county or municipality and written notice given to the supreme court of such authorization prior to December first of the year preceding the state fiscal year during which such surcharge is to be collected and disbursed in the manner provided by sections 488.010 to 488.020.**]** If imposed by a municipality, such surcharges shall be collected by the clerk of the municipal court responsible for collecting court costs and fines and shall be transmitted monthly to the treasurer of the municipality where the violation occurred in cases of violations of municipal ordinances. If imposed by a county, such surcharges shall be collected and disbursed as provided in sections 488.010 to 488.020. Such surcharges shall be payable to the treasurer of the county where the violation occurred in the case of violations of the general criminal laws of the state or county ordinances. An additional surcharge in the amount of one dollar shall be assessed as provided in this section, and shall be collected and disbursed as provided in sections 488.010 to 488.020 and payable to the state treasury to the credit of the peace officer standards and training commission fund created in section 590.178, RSMo. Such surcharges shall be in addition to the

court costs and fees and limits on such court costs and fees established by section 66.110, RSMo, and section 479.260, RSMo.

2. Each county and municipality shall use all funds received under this section only to pay for the training required as provided in sections 590.100 to 590.180, RSMo, or for the training of county coroners and their deputies. No county or municipality shall retain more than one thousand five hundred dollars of such funds for each certified law enforcement officer, candidate for certification employed by that agency or a coroner and the coroner's deputies. Any excess funds shall be transmitted quarterly to the general revenue fund of the county or municipality treasury which assessed the costs.

490.130. CERTIFIED RECORDS OF COURTS TO BE EVIDENCE. — The records of judicial proceedings of any court of the United States, or of any state, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, and certified by the judge, chief justice or presiding associate circuit judge of the court to be attested in due form, shall have such faith and credit given to them in this state as they would have at the place whence the said records come. Copies from the record of proceedings of any court of this state, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, or if there be no seal, with the private seal of the clerk, shall be received as evidence of the acts or proceedings of such court in any court of this state. Records of proceedings of any court of this state contained within any statewide court automated record-keeping system established by the supreme court shall be received as evidence of the acts or proceedings in any court of this state **without further certification of the clerk, provided that the location from which such records are obtained is disclosed to the opposing party**.

491.300. FEES OF INTERPRETERS. — **1.** Interpreters and translators in civil and criminal cases shall be allowed a reasonable fee approved by the court.

2. Such fee shall be payable by the state in criminal cases from funds appropriated to the office of the state courts administrator **if the person requiring an interpreter or translator during the court proceeding is a party to or witness in the proceeding.**

508.190. PARTY APPLYING TO PAY COSTS, WHEN — PAID TO WHICH COUNTY — JURY SELECTION AND SERVICE COSTS PAID BY COUNTY IN WHICH CASE ORIGINATED. — 1. All the costs and expenses attending any such change of venue, made on the application of either party, shall be taxed against and paid by the petitioner, and shall not be taxed in the costs of the suit; provided, however, that when the change of venue is sought on the grounds of the prejudice of the inhabitants of the county, and the application is controverted by the opposing party, the costs incurred by the opposing party in hearing and determining said application shall be taxed against and paid by the losing party to said application.

2. All court costs paid or payable with respect to any civil case in which venue is transferred which are to be distributed to the county in which the case is filed, shall be paid to the county to which the case is transferred. If any such court costs have been paid by a party prior to the order changing venue, such costs shall be paid by the treasurer of the county in which the case was originally filed, to the county to which the case is transferred.

3. All expenses of whatever nature incurred by a county as a result of jury selection and service pursuant to the provisions of chapter 494, RSMo, shall be paid by the county in which the case was originally instituted to the county in which the case is actually tried, except when such case is transferred for improper venue.

512.180. APPEALS FROM CASES TRIED BEFORE ASSOCIATE CIRCUIT JUDGE. — 1. Any person aggrieved by a judgment in a civil case tried without a jury before an associate circuit judge, other than an associate circuit judge sitting in the probate division or who has been assigned to hear the case on the record under procedures applicable before circuit judges, shall

have the right of a trial de novo in all cases where the petition claims damages not to exceed **[**five**]** **three** thousand dollars.

2. In all other contested civil cases tried with or without a jury before an associate circuit judge or on assignment under such procedures applicable before circuit judges or in any misdemeanor case or county ordinance violation case a record shall be kept, and any person aggrieved by a judgment rendered in any such case may have an appeal upon that record to the appropriate appellate court. At the discretion of the judge, but in compliance with the rules of the supreme court, the record may be a stenographic record or one made by the utilization of electronic, magnetic, or mechanical sound or video recording devices.

534.070. COMPLAINT AND SUMMONS — COURT DATE ASSIGNED, WHEN. — 1. When complaint to the circuit court of the proper county shall be made in writing, signed by the party aggrieved, his agent or attorney, and sworn to, specifying the lands, tenements or other possessions so forcibly entered and detained, or unlawfully detained, and by whom and when done, it shall be the duty of the **[**judge hearing such case**]** **clerk of the court** to issue **[**his**]** **a** summons **[**under his hand,**]** directed to the sheriff or proper officer of the county, commanding him to summon the person against whom the complaint shall have been made to appear, at a day in such summons to be specified.

2. A court date shall be assigned at the time the summons is issued. The court date shall be for a day certain which is not more than twenty-one business days from the date the summons is issued unless, at the time the case is filed, the plaintiff or plaintiff's attorney consents in writing to a later date.

535.030. SERVICE OF SUMMONS — COURT DATE INCLUDED IN SUMMONS. — 1. Such summons shall be served as in other civil cases at least four days before the court date in the summons. The summons shall include a court date which shall not be more than twenty-one business days from the date the summons is issued unless at the time of filing the affidavit the plaintiff or plaintiff's attorney consents in writing to a later date.

2. In addition to attempted personal service, the plaintiff may request, and thereupon the **[**judge, before whom the proceeding is commenced,**]** **clerk of the court** shall make an order directing that the officer, or other person empowered to execute the summons, shall also serve the same by securely affixing a copy of such summons and the complaint in a conspicuous place on the dwelling of the premises in question at least ten days before the court date in such summons, and by also mailing a copy of the summons and complaint to the defendant at the defendant's last known address by ordinary mail and by certified mail, return receipt requested, deliver to addressee only, at least ten days before the court date. If the officer, or other person empowered to execute the summons, shall return that the defendant is not found, or that the defendant has absconded or vacated his usual place of abode in this state, and if proof be made by affidavit of the posting and of the mailing of a copy of the summons and complaint, the judge shall at the request of the plaintiff proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that no money judgment shall be granted the plaintiff where the defendant is in default and service is by the posting and mailing procedure set forth in this section.

3. If the plaintiff does not request service of the original summons by posting and mailing as provided in subsection 2 of this section, and if the officer, or other person empowered to execute the summons, makes return that the defendant is not found, or that the defendant has absconded or vacated the defendant's usual place of abode in this state, the plaintiff may request the issuance of an alias summons and service of the same by posting and mailing in the time and manner provided in subsection 2 of this section. In addition, the plaintiff or an agent of the plaintiff who is at least eighteen years of age may serve the summons by posting and mailing a copy of the summons in the time and manner provided in subsection 2 of this section. Upon proof by affidavit of the posting and of the mailing of a copy of the summons or alias summons

and the complaint, the judge shall proceed to hear the case as if there had been personal service, and judgment shall be rendered and proceedings had as in other cases, except that no money judgment shall be granted the plaintiff where the defendant is in default and service is by the posting and mailing procedure provided in subsection 2 of this section.

4. On the date judgment is rendered as provided in this section where the defendant is in default, the **clerk of the** court shall mail to the defendant at the defendant's last known address by certified mail, with a request for return receipt and with directions to deliver to the addressee only, a notice informing the defendant of the judgment and the date it was entered, and stating that the defendant has ten days from the date of the judgment to file a motion to set aside the judgment or to file an application for a trial de novo in the circuit court, as the case may be, and that unless the judgment is set aside or an application for a trial de novo is filed within ten days, the judgment will become final and the defendant will be subject to eviction from the premises without further notice.

536.160. REFUND OF FUNDS PAID INTO COURT, WHEN. — In the event a reviewing court reverses a decision of a state agency, remands the matter to the agency for further proceedings and orders the payment into court of any increase in funds authorized by said decision, and thereafter, on remand, the state agency reaches the same result, reaffirms or ratifies its prior decision, then the entity which paid such funds into court shall be entitled to a refund of such funds, including all interest accrued thereon. This provision is enacted in part to clarify and specify the law in existence prior to August 28, 2001.

547.035. POSTCONVICTION DNA TESTING FOR PERSONS IN THE CUSTODY OF THE DEPARTMENT — MOTION, CONTENTS — PROCEDURE. — 1. A person in the custody of the department of corrections claiming that forensic DNA testing will demonstrate the person's innocence of the crime for which the person is in custody may file a post-conviction motion in the sentencing court seeking such testing. The procedure to be followed for such motions is governed by the rules of civil procedure insofar as applicable.

2. The motion must allege facts under oath demonstrating that:

(1) There is evidence upon which DNA testing can be conducted; and

(2) The evidence was secured in relation to the crime; and

(3) The evidence was not previously tested by the movant because:

(a) The technology for the testing was not reasonably available to the movant at the time of the trial;

(b) Neither the movant nor his or her trial counsel was aware of the existence of the evidence at the time of trial; or

(c) The evidence was otherwise unavailable to both the movant and movant's trial counsel at the time of trial; and

(4) Identity was an issue in the trial; and

(5) A reasonable probability exists that the movant would not have been convicted if exculpatory results had been obtained through the requested DNA testing.

3. Movant shall file the motion and two copies thereof with the clerk of the sentencing court. The clerk shall file the motion in the original criminal case and shall immediately deliver a copy of the motion to the prosecutor.

4. The court shall issue to the prosecutor an order to show cause why the motion should not be granted unless:

(1) It appears from the motion that the movant is not entitled to relief; or

(2) The court finds that the files and records of the case conclusively show that the movant is not entitled to relief.

5. Upon the issuance of the order to show cause, the clerk shall notify the court reporter to prepare and file the transcript of the trial or the movant's guilty plea and sentencing hearing if the transcript has not been prepared or filed.

6. If the court finds that the motion and the files and records of the case conclusively show that the movant is not entitled to relief, a hearing shall not be held. If a hearing is ordered, counsel shall be appointed to represent the movant if the movant is indigent. The hearing shall be on the record. Movant need not be present at the hearing. The court may order that testimony of the movant shall be received by deposition. The movant shall have the burden of proving the allegations of the motion by a preponderance of the evidence.

7. The court shall order appropriate testing if the court finds:

(1) A reasonable probability exists that the movant would not have been convicted if exculpatory results had been obtained through the requested DNA testing; and

(2) That movant is entitled to relief.

Such testing shall be conducted by a facility mutually agreed upon by the movant and by the state and approved by the court. If the parties are unable to agree, the court shall designate the testing facility. The court shall impose reasonable conditions on the testing to protect the state's interests in the integrity of the evidence and the testing process.

8. The court shall issue findings of fact and conclusions of law whether or not a hearing is held.

547.037. MOTION FOR RELEASE FILED, WHEN, PROCEDURE. — 1. If testing ordered pursuant to section 547.035 demonstrates a person's innocence of the crime for which the person is in custody, a motion for release may be filed in the sentencing court.

2. The court shall issue to the prosecutor an order to show cause why the motion should not be granted. The prosecutor shall file a response consenting to or opposing the motion.

3. If the prosecutor consents to the motion and if the court finds that such testing demonstrates the movant's innocence of the crime for which he or she is in custody, the court shall order the movant's release from the sentence for the crime for which testing occurred.

4. If the prosecutor files a response opposing the movant's release, the court shall conduct a hearing. If a hearing is ordered, the public defender shall be appointed to represent the movant if the movant is indigent. The hearing shall be on the record. The movant shall have the burden of proving the allegations of the motion by a preponderance of the evidence.

5. If the court finds that the testing ordered pursuant to section 547.035, demonstrates the movant's innocence of the crime for which he or she is in custody, the court shall order the movant's release from the sentence for the crime for which the testing occurred. Otherwise, relief shall be denied the movant.

6. The court shall issue findings of fact and conclusions of law whether or not a hearing is held. An appeal may be taken from the court's findings and conclusions as in other civil cases.

550.120. COSTS IN CHANGE OF VENUE — COSTS DEFINED. — 1. In any criminal **[**cause**]** **or civil case** in which a change of venue is taken from one county to any other county, **[**for any of the causes mentioned in existing laws,**]** and whenever a prisoner shall, for any cause, be confined in the jail of one county, such costs shall be paid by the county in which the **case,** indictment or information was originally instituted **to the county in which the case is actually tried or where the prisoner is confined, except when such case is transferred for improper venue**. In all cases where fines are imposed upon conviction under such indictments or prosecutions, or penalties or forfeitures of penal bonds in criminal cases, are collected, by civil action or otherwise, payable to the county, such fines, penalties and forfeitures shall be paid into the treasury of the county where such indictment or information was originally found or such prosecution originally instituted, for the benefit of the public school fund of the county.

2. The term "costs" as used in this section means:

(1) All items, services and other matters defined as costs under any other provisions of law relating to criminal **or civil** procedures;

(2) All moneys expended as salaries of persons directly related to the care of **criminal** defendants, security of the court, security of the jury and the room and board thereof, transportation of the jury, security and room and board of witnesses, and the processing of the cause, **paid or** payable out of the county treasury to which venue has been changed;

(3) All expenses of whatever nature incurred by a county as the result of jury selection **[**under**] and service pursuant to** the provisions of **[**section 545.485**] chapter 494**, RSMo;

(4) Any other expense directly related to the trial and prosecution of such criminal charge found necessary by the trial judge hearing the case.

565.030. TRIAL PROCEDURE, FIRST DEGREE MURDER. — 1. Where murder in the first degree is charged but not submitted or where the state waives the death penalty, the submission to the trier and all subsequent proceedings in the case shall proceed as in all other criminal cases with a single stage trial in which guilt and punishment are submitted together.

2. Where murder in the first degree is submitted to the trier without a waiver of the death penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of punishment shall not be submitted to the trier at the first stage. If an offense is charged other than murder in the first degree in a count together with a count of murder in the first degree, the trial judge shall assess punishment on any such offense according to law, after the defendant is found guilty of such offense and after he finds the defendant to be a prior offender pursuant to chapter 558, RSMo.

3. If murder in the first degree is submitted and the death penalty was not waived but the trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed at which the only issue shall be the punishment to be assessed and declared. No further evidence shall be received. If the trier is a jury it shall be instructed on the law. The attorneys may then argue as in other criminal cases the issue of punishment, after which the trier shall assess and declare the punishment as in all other criminal cases.

4. If the trier at the first stage of a trial where the death penalty was not waived finds the defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and mitigation of punishment, including but not limited to evidence supporting any of the aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be presented subject to the rules of evidence at criminal trials. Such evidence may include, within the discretion of the court, evidence concerning the murder victim and the impact of the crime upon the family of the victim and others. Rebuttal and surrebuttal evidence may be presented. The state shall be the first to proceed. If the trier is a jury it shall be instructed on the law. The attorneys may then argue the issue of punishment to the jury, and the state shall have the right to open and close the argument. The trier shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor:

(1) **If the trier finds by a preponderance of the evidence that the defendant is mentally retarded; or**

(2) If the trier does not find beyond a reasonable doubt at least one of the statutory aggravating circumstances set out in subsection 2 of section 565.032; or

[(2) If the trier does not find that the evidence in aggravation of punishment, including but not limited to evidence supporting the statutory aggravating circumstances listed in subsection 2 of section 565.032, warrants imposing the death sentence; or**]**

(3) If the trier concludes that there is evidence in mitigation of punishment, including but not limited to evidence supporting the statutory mitigating circumstances listed in subsection 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment found by the trier; or

(4) If the trier decides under all of the circumstances not to assess and declare the punishment at death. If the trier is a jury it shall be so instructed.

If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out in writing the aggravating circumstance or circumstances listed in subsection 2 of section 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed before the case is submitted that if it is unable to decide or agree upon the punishment the court shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor or death. The court shall follow the same procedure as set out in this section whenever it is required to determine punishment for murder in the first degree.

5. Upon written agreement of the parties and with leave of the court, the issue of the defendant's mental retardation may be taken up by the court and decided prior to trial without prejudicing the defendant's right to have the issue submitted to the trier of fact as provided in subsection 4 of this section.

6. As used in this section, the terms "mental retardation" or "mentally retarded" refer to a condition involving substantial limitations in general functioning characterized by significantly subaverage intellectual functioning with continual extensive related deficits and limitations in two or more adaptive behaviors such as communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, which conditions are manifested and documented before eighteen years of age.

7. The provisions of this section shall only govern offenses committed on or after August 28, 2001.

574.075. DRUNKENNESS OR DRINKING IN CERTAIN PLACES PROHIBITED — VIOLATION A MISDEMEANOR. — It shall be unlawful for any person in this state to enter any schoolhouse or church house in which there is an assemblage of people, met for a lawful purpose, or any courthouse, in a drunken or intoxicated and disorderly condition, or to drink or offer to drink any intoxicating liquors in the presence of such assembly of people, or in any courthouse within this state and any person or persons so doing shall be guilty of a misdemeanor**; unless, however, the circuit court has by local rule authorized law library associations to conduct social events after business hours in any courthouse**.

595.030. COMPENSATION, OUT-OF-POCKET LOSS REQUIREMENT, MAXIMUM AMOUNT FOR COUNSELING EXPENSES — AWARD, COMPUTATION — DEDUCTION — MEDICAL CARE, REQUIREMENTS — COUNSELING, REQUIREMENTS — MAXIMUM AWARD — JOINT CLAIMANTS, DISTRIBUTION — METHOD, TIMING OF PAYMENT DETERMINED BY DIVISION. — 1. No compensation shall be paid unless the claimant has incurred an out-of-pocket loss of at least fifty dollars or has lost two continuous weeks of earnings or support from gainful employment. "Out-of-pocket loss" shall mean unreimbursed or unreimbursable expenses or indebtedness reasonably incurred for medical care or other services, including psychiatric, psychological or counseling expenses, necessary as a result of the crime upon which the claim is based, except that the amount paid for psychiatric, psychological or counseling expenses per eligible claim shall not exceed two thousand five hundred dollars. **[**Fifty dollars shall be deducted from any award granted under sections 595.010 to 595.075, except that an award to a person sixty-five years of age or older is not subject to any deduction.**]**

2. No compensation shall be paid unless the division of workers' compensation finds that a crime was committed, that such crime directly resulted in personal physical injury to, or the death of, the victim, and that police records show that such crime was promptly reported to the proper authorities. In no case may compensation be paid if the police records show that such report was made more than forty-eight hours after the occurrence of such crime, unless the division of workers' compensation finds that the report to the police was delayed for good cause.

If the victim is under eighteen years of age such report may be made by the victim's parent, guardian or custodian; by a physician, a nurse, or hospital emergency room personnel; by the division of family services personnel; or by any other member of the victim's family.

3. No compensation shall be paid for medical care if the service provider is not a medical provider as that term is defined in section 595.027, and the individual providing the medical care is not licensed by the state of Missouri or the state in which the medical care is provided.

4. No compensation shall be paid for psychiatric treatment or other counseling services, including psychotherapy, unless the service provider is a:

(1) Physician licensed pursuant to chapter 334, RSMo, or licensed to practice medicine in the state in which the service is provided;

(2) Psychologist licensed pursuant to chapter 337, RSMo, or licensed to practice psychology in the state in which the service is provided;

(3) Clinical social worker licensed pursuant to chapter 337, RSMo; or

(4) Professional counselor licensed pursuant to chapter 337, RSMo.

5. Any compensation paid **[**under**]** **pursuant to** sections 595.010 to 595.075 for death or personal injury shall be in an amount not exceeding out-of-pocket loss, together with loss of earnings or support from gainful employment, not to exceed two hundred dollars per week, resulting from such injury or death. In the event of death of the victim, an award may be made for reasonable and necessary expenses actually incurred for preparation and burial not to exceed five thousand dollars.

6. Any compensation for loss of earnings or support from gainful employment shall be in an amount equal to the actual loss sustained not to exceed two hundred dollars per week; provided, however, that no award **[**under**]** **pursuant to** sections 595.010 to 595.075 shall exceed **[**fifteen**]** **twenty-five** thousand dollars. If two or more persons are entitled to compensation as a result of the death of a person which is the direct result of a crime or in the case of a sexual assault, the compensation shall be apportioned by the division of workers' compensation among the claimants in proportion to their loss.

7. The method and timing of the payment of any compensation **[**under**]** **pursuant to** sections 595.010 to 595.075 shall be determined by the division.

595.035. AWARD STANDARDS TO BE ESTABLISHED — AMOUNT OF AWARD, FACTORS TO BE CONSIDERED — PURPOSE OF FUND, REDUCTION FOR OTHER COMPENSATION RECEIVED BY VICTIM, EXCEPTIONS — TIME LIMITATION. — 1. For the purpose of determining the amount of compensation payable pursuant to sections 595.010 to 595.075, the division of workers' compensation shall, insofar as practicable, formulate standards for the uniform application of sections 595.010 to 595.075, taking into consideration the provisions of sections 595.010 to 595.075, the rates and amounts of compensation payable for injuries and death **[**under**]** **pursuant to** other laws of this state and of the United States, excluding pain and suffering, and the availability of funds appropriated for the purpose of sections 595.010 to 595.075. All decisions of the division of workers' compensation on claims heard **[**under**]** **pursuant to** sections 595.010 to 595.075 shall be in writing, setting forth the name of the claimant, the amount of compensation and the reasons for the decision. The division of workers' compensation shall immediately notify the claimant in writing of the decision and shall forward to the state treasurer a certified copy of the decision and a warrant for the amount of the claim. The state treasurer, upon certification by the commissioner of administration, shall, if there are sufficient funds in the crime victims' compensation fund, pay to or on behalf of the claimant the amount determined by the division.

2. The crime victims' compensation fund is not a state health program and is not intended to be used as a primary payor to other health care assistance programs, but is a public, quasi-charitable fund whose fundamental purpose is to assist victims of violent crimes through a period of financial hardship, as a payor of last resort. Accordingly, any compensation paid

pursuant to sections 595.010 to 595.075 shall be reduced by the amount of any payments, benefits or awards received or to be received as a result of the injury or death:

(1) From or on behalf of the offender;

(2) Under private or public insurance programs, including champus, medicare, medicaid and other state or federal programs**, but not including any life insurance proceeds**; or

(3) From any other public or private funds, including an award payable **[**under**]** **pursuant to** the workers' compensation laws of this state.

3. In determining the amount of compensation payable, the division of workers' compensation shall determine whether, because of the victim's consent, provocation, incitement or negligence, the victim contributed to the infliction of the victim's injury or death, and shall reduce the amount of the compensation or deny the claim altogether, in accordance with such determination; provided, however, that the division of workers' compensation may disregard the responsibility of the victim for his **or her** own injury where such responsibility was attributable to efforts by the victim to aid a victim, or to prevent a crime or an attempted crime from occurring in his **or her** presence, or to apprehend a person who had committed a crime in his **or her** presence or had in fact committed a felony.

4. In determining the amount of compensation payable pursuant to sections 595.010 to 595.070, monthly social security disability or retirement benefits received by the victim shall not be considered by the division as a factor for reduction of benefits.

5. The division shall not be liable for payment of compensation for any out-of-pocket expenses incurred more than three years following the date of the occurrence of the crime upon which the claim is based.

595.045. FUNDING — COSTS FOR CERTAIN VIOLATIONS, AMOUNT, DISTRIBUTION OF FUNDS, AUDIT — JUDGMENTS IN CERTAIN CRIMINAL CASES, AMOUNT — FAILURE TO PAY, EFFECT, NOTICE — COURT COST DEDUCTED — INSUFFICIENT FUNDS TO PAY CLAIMS, PROCEDURE — INTEREST EARNED, DISPOSITION — CONTINGENT EXPIRATION DATE FOR CERTAIN SUBSECTIONS. — 1. There is established in the state treasury the "Crime Victims' Compensation Fund". A surcharge of **[**five**]** **seven** dollars **and fifty cents** shall be assessed as costs in each court proceeding filed in any court in the state in all criminal cases including violations of any county ordinance or any violation of criminal or traffic laws of the state, including an infraction and violation of a municipal ordinance; except that no such fee shall be collected in any proceeding in any court when the proceeding or the defendant has been dismissed by the court or when costs are to be paid by the state, county, or municipality. A surcharge of **[**five**]** **seven** dollars **and fifty cents** shall be assessed as costs in a juvenile court proceeding in which a child is found by the court to come within the applicable provisions of subdivision (3) of subsection 1 of section 211.031, RSMo.

2. Notwithstanding any other provision of law to the contrary, the moneys collected by clerks of the courts pursuant to the provisions of subsection 1 of this section shall be collected and disbursed in accordance with sections 488.010 to 488.020, RSMo, and shall be payable to the director of the department of revenue.

3. The director of revenue shall deposit annually the amount of two hundred fifty thousand dollars to the state forensic laboratory account administered by the department of public safety to provide financial assistance to defray expenses of crime laboratories if such analytical laboratories are registered with the federal Drug Enforcement Agency or the Missouri department of health. Subject to appropriations made therefor, such funds shall be distributed by the department of public safety to the crime laboratories serving the courts of this state making analysis of a controlled substance or analysis of blood, breath or urine in relation to a court proceeding.

[3.**]** **4.** The remaining funds collected under subsection 1 of this section **shall be denoted to the payment of an annual appropriation for the administrative and operational costs of the office for victims of crime and, if a statewide automated crime victim notification**

system is established pursuant to section 650.310, RSMo, to the monthly payment of expenditures actually incurred in the operation of such system. Additional remaining funds shall be subject to the following provisions:

(1) On the first of every month, the director of revenue or the director's designee shall determine the balance of the funds in the crime victims' compensation fund available to satisfy the amount of compensation payable pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

(2) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available exceeds one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit fifty percent to the credit of the crime victims' compensation fund and fifty percent to the services to victims' fund established in section 595.100;

(3) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available is less than one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit seventy-five percent to the credit of the crime victims' compensation fund and twenty-five percent to the services to victims' fund established in section 595.100.

[4.**]** **5.** The director of revenue or such director's designee shall at least monthly report the moneys paid pursuant to this section into the crime victims' compensation fund and the services to victims fund to the division of workers' compensation and the department of public safety, respectively.

[5.**]** **6.** The moneys collected by clerks of municipal courts pursuant to subsection 1 of this section shall be collected and disbursed as provided by sections 488.010 to 488.020, RSMo. Five percent of such moneys shall be payable to the city treasury of the city from which such funds were collected. The remaining ninety-five percent of such moneys shall be payable to the director of revenue. The funds received by the director of revenue pursuant to this subsection shall be distributed as follows:

(1) On the first of every month, the director of revenue or the director's designee shall determine the balance of the funds in the crime victims' compensation fund available to satisfy the amount of compensation payable pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

(2) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available exceeds one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit fifty percent to the credit of the crime victims' compensation fund and fifty percent to the services to victims' fund established in section 595.100;

(3) Beginning on October 1, 1996, and on the first of each month, if the balance of the funds available is less than one million dollars plus one hundred percent of the previous twelve months' actual expenditures, excluding the immediate past calendar month's expenditures, paid pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055, then the director of revenue or the director's designee shall deposit seventy-five percent to the credit of the crime victims' compensation fund and twenty-five percent to the services to victims' fund established in section 595.100.

[6.**]** **7.** These funds shall be subject to a biennial audit by the Missouri state auditor. Such audit shall include all records associated with crime victims' compensation funds collected, held or disbursed by any state agency.

[7.**]** **8.** In addition to the moneys collected pursuant to subsection 1 of this section, the court shall enter a judgment in favor of the state of Missouri, payable to the crime victims' compensation fund, of sixty-eight dollars if the conviction is for a class A or B felony; forty-six dollars if the conviction is for a class C or D felony; and ten dollars if the conviction is for any misdemeanor under the following Missouri laws:

(1) Chapter 195, RSMo, relating to drug regulations;

(2) Chapter 311, RSMo, but relating only to felony violations of this chapter committed by persons not duly licensed by the supervisor of liquor control;

(3) Chapter 491, RSMo, relating to witnesses;

(4) Chapter 565, RSMo, relating to offenses against the person;

(5) Chapter 566, RSMo, relating to sexual offenses;

(6) Chapter 567, RSMo, relating to prostitution;

(7) Chapter 568, RSMo, relating to offenses against the family;

(8) Chapter 569, RSMo, relating to robbery, arson, burglary and related offenses;

(9) Chapter 570, RSMo, relating to stealing and related offenses;

(10) Chapter 571, RSMo, relating to weapons offenses;

(11) Chapter 572, RSMo, relating to gambling;

(12) Chapter 573, RSMo, relating to pornography and related offenses;

(13) Chapter 574, RSMo, relating to offenses against public order;

(14) Chapter 575, RSMo, relating to offenses against the administration of justice;

(15) Chapter 577, RSMo, relating to public safety offenses.

Any clerk of the court receiving moneys pursuant to such judgments shall collect and disburse such crime victims' compensation judgments in the manner provided by sections 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and deposited to the credit of the crime victims' compensation fund.

[8.**]** **9.** The clerk of the court processing such funds shall maintain records of all dispositions described in subsection 1 of this section and all dispositions where a judgment has been entered against a defendant in favor of the state of Missouri in accordance with this section; all payments made on judgments for alcohol-related traffic offenses; and any judgment or portion of a judgment entered but not collected. These records shall be subject to audit by the state auditor. The clerk of each court transmitting such funds shall report separately the amount of dollars collected on judgments entered for alcohol-related traffic offenses from other crime victims' compensation collections or services to victims collections.

[9.**]** **10.** The clerks of the court shall report all delinquent payments to the department of revenue by October first of each year for the preceding fiscal year, and such sums may be withheld pursuant to subsection **[**14**]** **15** of this section.

[10.**]** **11.** The department of revenue shall maintain records of funds transmitted to the crime victims' compensation fund by each reporting court and collections pursuant to subsection **[**17**]** **18** of this section and shall maintain separate records of collection for alcohol-related offenses.

[11.**]** **12.** Notwithstanding any other provision of law to the contrary, the provisions of subsections **[**8 and 9**]** **9 and 10** of this section shall expire and be of no force and effect upon the effective date of the supreme court rule adopted pursuant to sections 488.010 to 488.020, RSMo.

[12.**]** **13.** The state courts administrator shall include in the annual report required by section 476.350, RSMo, the circuit court caseloads and the number of crime victims' compensation judgments entered.

[13.**]** **14.** All awards made to injured victims under sections 595.010 to 595.105 and all appropriations for administration of sections 595.010 to 595.105, except sections 595.050 and 595.055, shall be made from the crime victims' compensation fund. Any unexpended balance remaining in the crime victims' compensation fund at the end of each biennium shall not be subject to the provision of section 33.080, RSMo, requiring the transfer of such unexpended balance to the ordinary revenue fund of the state, but shall remain in the crime victims'

compensation fund. In the event that there are insufficient funds in the crime victims' compensation fund to pay all claims in full, all claims shall be paid on a pro rata basis. If there are no funds in the crime victims' compensation fund, then no claim shall be paid until funds have again accumulated in the crime victims' compensation fund. When sufficient funds become available from the fund, awards which have not been paid shall be paid in chronological order with the oldest paid first. In the event an award was to be paid in installments and some remaining installments have not been paid due to a lack of funds, then when funds do become available that award shall be paid in full. All such awards on which installments remain due shall be paid in full in chronological order before any other postdated award shall be paid. Any award pursuant to this subsection is specifically not a claim against the state, if it cannot be paid due to a lack of funds in the crime victims' compensation fund.

[14.**]** **15.** When judgment is entered against a defendant as provided in this section and such sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the state of Missouri to such defendant an amount equal to the unpaid amount of such judgment. Such amount shall be paid forthwith to the crime victims' compensation fund and satisfaction of such judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for such judgment. The director of the department of corrections shall have the authority to pay into the crime victims' compensation fund from an offender's compensation or account the amount owed by the offender to the crime victims' compensation fund, provided that the offender has failed to pay the amount owed to the fund prior to entering a correctional facility of the department of corrections.

[15.**]** **16.** All interest earned as a result of investing funds in the crime victims' compensation fund shall be paid into the crime victims' compensation fund and not into the general revenue of this state.

[16.**]** **17.** Any person who knowingly makes a fraudulent claim or false statement in connection with any claim hereunder is guilty of a class A misdemeanor.

[17.**]** **18.** Any gifts, contributions, grants or federal funds specifically given to the division for the benefit of victims of crime shall be credited to the crime victims' compensation fund. Payment or expenditure of moneys in such funds shall comply with any applicable federal crime victims' compensation laws, rules, regulations or other applicable federal guidelines.

610.105. EFFECT OF NOLLE PROS — DISMISSAL — SENTENCE SUSPENDED ON RECORD — NOT GUILTY DUE TO MENTAL DISEASE OR DEFECT, EFFECT. — If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated **[**except that the disposition portion of the record may be accessed and**]** except as provided in section 610.120 **and except that the court's judgment or order or the final action taken by the prosecutor in such matters may be accessed**. If the accused is found not guilty due to mental disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall thereafter be closed records upon such findings, except that the disposition may be accessed only by law enforcement agencies, child-care agencies, facilities as defined in section 198.006, RSMo, and in-home services provider agencies as defined in section 660.250, RSMo, in the manner established by section 610.120.

632.480. DEFINITIONS. — As used in sections 632.480 to 632.513, the following terms mean:

(1) "Agency with jurisdiction", the department of corrections or the department of mental health;

(2) "Mental abnormality", a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others;

(3) "Predatory", acts directed towards **[**strangers or individuals with whom relationships have been established or promoted**] individuals, including family members,** for the primary purpose of victimization;

(4) "Sexually violent offense", the felonies of forcible rape, rape, statutory rape in the first degree, forcible sodomy, sodomy, statutory sodomy in the first degree, or an attempt to commit any of the preceding crimes, or child molestation in the first or second degree, sexual abuse, sexual assault, deviate sexual assault, or the act of abuse of a child as defined in subdivision (1) of subsection 1 of section 568.060, RSMo, which involves sexual contact, and as defined in subdivision (2) of subsection 1 of section 568.060, RSMo;

(5) "Sexually violent predator", any person who suffers from a mental abnormality which makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility and who:

(a) Has pled guilty or been found guilty, or been found not guilty by reason of mental disease or defect pursuant to section 552.030, RSMo, of a sexually violent offense; or

(b) Has been committed as a criminal sexual psychopath pursuant to section 632.475 and statutes in effect before August 13, 1980.

632.483. NOTICE TO ATTORNEY GENERAL, WHEN — CONTENTS OF NOTICE — IMMUNITY FROM LIABILITY, WHEN — MULTIDISCIPLINARY TEAM ESTABLISHED — PROSECUTORS' REVIEW COMMITTEE ESTABLISHED. — 1. When it appears that a person may meet the criteria of a sexually violent predator, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection 4 of this section. Written notice shall be given:

(1) Within **[**one**] three** hundred **[**eighty**] sixty** days prior to the anticipated release from a correctional center of the department of corrections of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than one hundred eighty days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) At any time prior to the release of a person who has been found not guilty by reason of mental disease or defect of a sexually violent offense; or

(3) At any time prior to the release of a person who was committed as a criminal sexual psychopath pursuant to section 632.475 and statutes in effect before August 13, 1980.

2. The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection 4 of this section of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) Documentation of institutional adjustment and any treatment received or refused, including the Missouri sexual offender program.

3. The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection 4 of this section, members of the prosecutor's review committee appointed as provided in subsection 5 of this section and individuals contracting or appointed to perform services hereunder shall be immune from liability for any conduct performed in good faith and without gross negligence pursuant to the provisions of sections 632.480 to 632.513.

4. The director of the department of mental health and the director of the department of corrections shall establish a multidisciplinary team consisting of no more than seven members, at least one from the department of corrections and the department of health, and which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection 1 of this section. The team, within thirty days of receiving

notice, shall assess whether or not the person meets the definition of a sexually violent predator. The team shall notify the attorney general of its assessment.

5. **[**Effective January 1, 2000,**]** The prosecutors coordinators training council established pursuant to section 56.760, RSMo, shall appoint a five-member prosecutor's review committee composed of a cross section of county prosecutors from urban and rural counties. No more than three shall be from urban counties, and one member shall be the prosecuting attorney of the county in which the person was convicted or committed pursuant to chapter 552, RSMo. The committee shall review the records of each person referred to the attorney general pursuant to subsection 1 of this section. The prosecutor's review committee shall make a determination of whether or not the person meets the definition of a sexually violent predator. The determination of the prosecutors' review committee or any member pursuant to this section or section 632.484 shall not be admissible evidence in any proceeding to prove whether or not the person is a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

632.492. TRIAL — PROCEDURE — ASSISTANCE OF COUNSEL, RIGHT TO JURY, WHEN. — Within sixty days after the completion of any examination held pursuant to section 632.489, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings pursuant to sections 632.480 to 632.513, any person subject to sections 632.480 to 632.513 shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. **If the trial is held before a jury, the judge shall instruct the jury that if it finds that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment.** If no demand for a jury is made, the trial shall be before the court. **The court shall conduct all trials pursuant to this section in open court, except as otherwise provided for by the child victim witness protection law pursuant to sections 491.675 to 491.705, RSMo.**

632.495. UNANIMOUS VERDICT REQUIRED — OFFENDER COMMITTED TO CUSTODY OF DEPARTMENT OF MENTAL HEALTH, WHEN — RELEASE, WHEN — MISTRIAL PROCEDURES. — The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. **[**Such**] Any** determination **as to whether a person is a sexually violent predator** may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the director of the department of mental health for control, care and treatment until such time as the person's mental abnormality has so changed that the person is safe to be at large. Such control, care and treatment shall be provided by the department of mental health. At all times, persons committed for control, care and treatment by the department of mental health pursuant to sections 632.480 to 632.513 shall be kept in a secure facility designated by the director of the department of mental health and such persons shall be segregated at all times from any other patient under the supervision of the director of the department of mental health. The department of mental health shall not place or house an offender determined to be a sexually violent predator, pursuant to sections 632.480 to 632.513, with other mental health patients who have not been determined to be sexually violent predators. The department of mental health is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the department of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the department of corrections, and except for occasional instances of

supervised incidental contact, shall be segregated from such offenders. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. If the person is ordered to the department of mental health, the director of the department of mental health shall determine the appropriate secure facility to house the person. Any subsequent trial following a mistrial shall be held within ninety days of the previous trial, unless such subsequent trial is continued as provided in section 632.492.

650.300. DEFINITIONS. — As used in sections 650.300 to 650.310, the following terms shall mean:

(1) "Catastrophic crime", a violation of section 569.070, RSMo;

(2) "Office", the office for victims of crime;

(3) "Private agency", a private agency as defined in section 595.010, RSMo;

(4) "Public agency", a public agency as defined in section 595.010, RSMo;

(5) "Victim of crime", a person afforded rights as a victim or entitled to compensation or services as a victim pursuant to chapter 595, RSMo.

650.310. OFFICE OF VICTIMS OF CRIME ESTABLISHED, PURPOSE — DUTIES. — 1. The office of victims of crime is hereby established within the department of public safety, for the purpose of promoting the fair and just treatment of victims of crime. The office shall coordinate and promote the state's program for victims of crime and shall provide channels of communication among public and private agencies and in exercising the rights afforded to victims of crime pursuant to chapter 595, RSMo, and the Missouri Constitution. In the event of a catastrophic crime the office shall, or upon the receipt of a specific request the office may, work closely with other state and local agencies to coordinate a response to meet the needs of any resulting victims of crime.

2. The office for victims of crime shall coordinate efforts with statewide coalitions or organizations that are involved in efforts to provide assistance to victims of crime and to reduce the incidence of domestic violence, sexual assault or other crime victimization. The office shall consult with such coalitions or organizations as to more efficient and effective coordination and delivery of services to victims of crime.

3. The office for victims of crime shall assess and report to the governor the costs and benefits of establishing a statewide automated crime victim notification system within the criminal justice system and shall serve as the coordinating agency for the development, implementation and maintenance of any such system. If such system is established pursuant to this section, no other state agency shall provide such services.

4. The department of public safety may promulgate administrative rules to implement this section, and any such rule that is wholly procedural and without fiscal impact shall be deemed to satisfy the requirements of section 536.016, RSMo.

SECTION 1. EVIDENCE CAPABLE OF BEING TESTED FOR DNA MUST BE PRESERVED BY HIGHWAY PATROL. — Any evidence leading to a conviction of a felony described in subsection 1 of section 650.055, RSMo, which has been or can be tested for DNA shall be preserved by the Missouri state highway patrol.

SECTION 2. ADDITIONAL $20 COURT COST IMPOSED, MUNICIPAL ORDINANCE VIOLATIONS — WAIVER, WHEN — COLLECTION (ST. LOUIS CITY). — 1. In addition to all other court costs for municipal ordinance violations, any city not within a county may provide for additional court costs in an amount up to twenty dollars per each case for each municipal ordinance violation case filed before a municipal division judge or associate circuit judge.

2. The judge may waive the assessment of the cost in those cases where the defendant is found by the judge to be indigent and unable to pay the cost.

3. Such cost shall be collected by the clerk and disbursed to the city at least monthly.

SECTION 3. ADDITIONAL $5 COURT COST IMPOSED, MUNICIPAL ORDINANCE VIOLATIONS — WAIVER, WHEN — COLLECTION (ST. LOUIS CITY). — 1. In addition to all other court costs for municipal ordinance violations any city not within a county may provide for additional court costs in an amount up to five dollars per case for each municipal ordinance violation case filed before a municipal division judge or associate circuit judge.

2. The judge may waive the assessment of the cost in those cases where the defendant is found by the judge to be indigent and unable to pay the costs.

3. Such cost shall be collected by the clerk and disbursed to the city at least monthly. The city shall use such additional costs only for the restoration, maintenance and upkeep of the municipal courthouses. The costs collected may be pledged to directly or indirectly secure bonds for the cost of restoration, maintenance and upkeep of the courthouses.

[247.224. RESIDENTS MAY ELECT TO BE REMOVED FROM A PUBLIC WATER SUPPLY DISTRICT IF UNABLE TO RECEIVE SERVICES, PROCEDURE, LIABILITY FOR COSTS (FRANKLIN COUNTY). — Any person who resides within the boundary of a public water supply district located in any county of the first classification with a population of more than eighty thousand and less than eighty-three thousand inhabitants and who is unable to receive services from such district due to the district's failure to provide such services may elect to be removed from such district by sending a written and signed request for removal via certified mail to the district. The district shall, upon receipt of such request, remove such resident from the district. If the resident elects to be removed from the district, the resident shall compensate the district for any costs incurred by the district for such resident's removal from the district and for any attempts by the district to provide service to such resident prior to the certified date that the district received the request for removal.**]**

Approved July 2, 2001

SB 274 [CCS HCS SB 274]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows counties to contribute to County Employees' Retirement System.

AN ACT to repeal sections 50.1000, 50.1010, 50.1230 and 50.1250, RSMo 2000, relating to certain county employees' retirement systems, and to enact in lieu thereof four new sections relating to the same subject, with an effective date for certain sections.

SECTION

A. Enacting clause.
50.1000. Definitions.
50.1010. Fund authorized, management — apportionment of benefits.
50.1230. Matching contributions by board, when, rules — matching contributions by county, when.
50.1250. Forfeiture of contributions, when — reversion of forfeitures — distribution of contribution account, when — death of a member, effect of.
B. Effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 50.1000, 50.1010, 50.1230 and 50.1250, RSMo 2000, are repealed and four new sections enacted in lieu thereof, to be known as sections 50.1000, 50.1010, 50.1230 and 50.1250, to read as follows:

50.1000. DEFINITIONS. — As used in sections 50.1000 to 50.1300, the following words and terms mean:

(1) "Annuity", annual payments, made in equal monthly installments, to a retired member from funds provided for in, or authorized by, the provisions of sections 50.1000 to 50.1300;

(2) "Average final compensation", the monthly average of the two highest years of annual compensation received by the member;

(3) "Board of directors" or "board", the board of directors established by the provisions of sections 50.1000 to 50.1300;

(4) "Compensation", all salary and other compensation payable to a county employee for personal services rendered as a county employee, but not including travel and mileage reimbursement, and not including compensation in excess of the limit imposed by 26 U.S.C. 401(a)(17);

(5) "County", each county in the state, except any city not within a county and counties of the first classification with a charter form of government;

(6) "Creditable service", a member's period of employment as an employee, including the member's prior service, except as provided in sections 50.1090 and 50.1140;

(7) "Effective date of the establishment of the system", August 28, 1994, the date the retirement system was established;

(8) "Employee", any county elective or appointive officer or employee who is hired and fired by the county **[**and**] or by the circuit court located in a county of the first classification without a charter form of government which is not participating in LAGERS,** whose work and responsibilities are directed and controlled by the county **[**and**] or by the circuit court located in a county of the first classification without a charter form of government which is not participating in LAGERS,** who is compensated directly from county funds**, and** whose position requires the actual performance of duties during not less than one thousand hours per year, except county prosecuting attorneys covered pursuant to sections 56.800 to 56.840, RSMo, circuit clerks and deputy circuit clerks covered under the Missouri state retirement system and county sheriffs covered pursuant to sections 57.949 to 57.997, RSMo, in each county of the state, except for any city not within a county and any county of the first classification having a charter form of government;

(9) "LAGERS", the local government employees' retirement system presently codified at sections 70.600 to 70.755, RSMo;

(10) "Primary Social Security amount", the old age insurance benefit pursuant to Section 202 of the Social Security Act (42 U.S.C. 402) payable to a member at age sixty-two. The primary Social Security amount shall be determined pursuant to the Social Security Act as in effect at the time the employee's normal annuity pursuant to section 50.1060 is determined. Such determination shall be at the time that creditable service ends without assuming any future increases in compensation, any future increases in the taxable wage base, any changes in the formulas used pursuant to the Social Security Act, or any future increases in the consumer price index. However, it shall be assumed that the employee will continue to receive compensation at the same rate as that received at the time the determination is being made, until the member reaches age sixty-two. Only compensation with respect to creditable service as a county employee shall be considered, and the first year of compensation as a county employee shall be regressed at three percent per year with respect to years prior to the period of creditable service;

(11) "Prior service", service of a member rendered prior to August 28, 1994, the effective date of the establishment of the system;

(12) "Required beginning date", the April first of the calendar year following the later of the calendar year in which the member reaches age seventy and one-half, or the calendar year in which the member retires;

(13) "Retirement fund" or "fund", the funds held by the county employees' retirement system;

(14) "Retirement system" or "system", the county employees' retirement system authorized by the provisions of sections 50.1000 to 50.1300;

(15) "Target replacement ratio":

(a) Eighty percent, if a member's average final compensation is thirty thousand dollars or less;

(b) Seventy-seven percent, if a member's average final compensation is forty thousand dollars or less, but greater than thirty thousand dollars;

(c) Seventy-two percent, if a member's average final compensation is fifty thousand dollars or less, but greater than forty thousand dollars;

(d) Seventy percent, if a member's average final compensation is greater than fifty thousand dollars.

50.1010. FUND AUTHORIZED, MANAGEMENT — APPORTIONMENT OF BENEFITS. — There is hereby authorized a "County Employees' Retirement Fund" which shall be under the management of a board of directors described in section 50.1030. The board of directors shall be responsible for the administration and the investment of the funds of such county employees' retirement fund. If insufficient funds are generated to provide the benefits payable pursuant to the provisions of sections 50.1000 to 50.1200, the board shall apportion the benefits according to the funds available. **Notwithstanding any provision of sections 50.1000 to 50.1200 to the contrary, an individual who is in a job classification that the retirement system finds not eligible for coverage under the retirement system as of September 1, 2001, shall not be considered an employee for purposes of coverage in the retirement system, unless adequate additional funds are provided for the costs associated with such coverage.**

50.1230. MATCHING CONTRIBUTIONS BY BOARD, WHEN, RULES — MATCHING CONTRIBUTIONS BY COUNTY, WHEN. — 1. The board, in its sole discretion, shall determine if it will make matching contributions for a calendar year and the aggregate amount of the contribution. Each member who makes contributions to the deferred compensation program described in section 50.1300 during the calendar year for which the contribution is made shall be eligible to receive an allocation of this contribution. Generally, the board shall allocate matching contributions pro rata, on the basis of a member's contributions to the deferred compensation program described in section 50.1300. However, the board shall follow these rules in making this allocation:

(1) **Board matching** contributions allocated to a member who is not a member of LAGERS shall not exceed the lesser of (i) three percent of such nonLAGERS member's compensation for the calendar year or (ii) fifty percent of such nonLAGERS member's contributions to the deferred compensation program described in section 50.1300;

(2) **Board matching** contributions allocated to a member who is a member of LAGERS shall not exceed the lesser of (i) one and one-half percent of such member's compensation for the calendar year or (ii) twenty-five percent of such member's contributions to the deferred compensation program described in section 50.1300;

(3) The board shall set a specific matching percentage for each calendar year. Unless otherwise provided in subdivision (1) of this section, the matching contribution allocated to a nonLAGERS member shall be such matching percentage, multiplied by the member's contributions to the deferred compensation program for the calendar year. Unless otherwise provided in subdivision (2) of this section, the **board** matching contribution allocated to a member who is also a LAGERS member shall be one-half of the matching percentage,

multiplied by the member's contributions to the deferred compensation program for the calendar year.

2. In addition to matching contributions made by the board pursuant to the aforementioned criteria, a county shall also be entitled to make matching contributions to defined contribution accounts of members employed by such county in accordance with the rules and regulations formulated and adopted by the board from time to time.

50.1250. FORFEITURE OF CONTRIBUTIONS, WHEN — REVERSION OF FORFEITURES — DISTRIBUTION OF CONTRIBUTION ACCOUNT, WHEN — DEATH OF A MEMBER, EFFECT OF. — 1. If a member has less than five years of creditable service upon termination of employment, the member shall forfeit the portion of his or her defined contribution account attributable to **board matching contributions or county** matching contributions pursuant to section 50.1230. The proceeds of such forfeiture shall be applied towards matching contributions made by the board for the calendar year in which the forfeiture occurs. If the board does not approve a matching contribution, then forfeitures shall revert to the county employees' retirement fund. **The proceeds of such forfeiture with respect to county matching contributions shall be applied toward matching contributions made by the respective county in accordance with rules prescribed by the board.**

2. A member shall be eligible to receive a distribution of the member's defined contribution account as soon as administratively feasible following termination of employment, or may choose to receive the account balance at a later time, but no later than his or her required beginning date. The member's account balance shall be paid in a single sum. The amount of the distribution shall be the amount determined as of the valuation date described in section 50.1240, if the member has at least five years of creditable service. If the member has less than five years of creditable service upon his or her termination of employment, then the amount of the distribution shall equal the portion of the member's defined contribution account attributable to the member's seed contributions pursuant to section 50.1220, if any, determined as of the valuation date.

3. If the member dies before receiving the member's account balance, the member's designated beneficiary shall receive the member's defined contribution account balance, as determined as of the immediately preceding valuation date, in a single sum. The member's beneficiary shall be his or her spouse, if married, or his or her estate, if not married, unless the member designates an alternative beneficiary in accordance with procedures established by the board.

SECTION B. EFFECTIVE DATE. — The repeal and reenactment of sections 50.1230 and 50.1250 shall become effective January 1, 2002.

Approved July 6, 2001

SB 275 [SB 275]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows the placement of a deaf or hearing-impaired notation on driver's licenses.

AN ACT to amend chapter 302, RSMo, by adding thereto one new section relating to hearing impaired drivers.

SECTION
A. Enacting clause.
302.174. Hearing impaired, driver's license special notation, definitions — rules authorized.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 302, RSMo, is amended by adding thereto one new section, to be known as section 302.174, to read as follows:

302.174. HEARING IMPAIRED, DRIVER'S LICENSE SPECIAL NOTATION, DEFINITIONS — RULES AUTHORIZED. — 1. As used in this section, the following terms mean:

(1) "Deaf person", any person who, because of hearing loss, is not able to discriminate speech when spoken in a normal conversation tone regardless of the use of amplification devices;

(2) "Hearing impaired person", any person who, because of hearing loss, has a diminished capacity to discriminate speech when spoken in a normal conversational tone;

(3) "J88", a notation on a driver's license that indicates the person is a deaf or hearing impaired person who uses alternative communication.

2. Any resident of this state who is a deaf or hearing impaired person may apply to the department of revenue to have the notation "J88" placed on the person's driver's license. The department of revenue, by rule, may establish the cost and criteria for placement of the "J88" notation, such as requiring an applicant to submit certain medical proof of deafness or hearing impairment.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are non-severable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

Approved July 10, 2001

SB 288 [HS HCS SB 288]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Revises provisions of Chapter 351 relating to corporations.

AN ACT to repeal sections 28.681, 59.040, 59.041, 59.050, 59.090, 59.100, 59.130, 59.250, 59.255, 59.257, 59.260, 59.300, 347.189, 347.740, 351.120, 351.127, 351.220, 351.268, 351.410, 351.415, 351.430, 351.435, 351.440, 351.458, 351.478, 351.482, 355.023, 356.233, 359.653, 400.1-105, 400.1-201, 400.2-103, 400.2-210, 400.2-326, 400.2-401, 400.2-502, 400.2-716, 400.2A-103, 400.2A- 303, 400.2A-307, 400.2A-309, 400.4-210, 400.7-503, 400.8-103, 400.8-106, 400.8-110, 400.8-301, 400.8-302, 400.8-510, 400.9- 101, 400.9-102, 400.9-103, 400.9-104, 400.9-105, 400.9-106, 400.9-107, 400.9-108, 400.9-109, 400.9-110, 400.9-111, 400.9-112, 400.9-113, 400.9-114, 400.9-115, 400.9-116, 400.9-201, 400.9-202, 400.9-203, 400.9-204, 400.9-205, 400.9-206, 400.9-207, 400.9-208, 400.9-301, 400.9-302, 400.9-303, 400.9-304, 400.9-305, 400.9-306, 400.9-307, 400.9-308, 400.9-309,

400.9-310, 400.9-311, 400.9-312, 400.9-313, 400.9-314, 400.9-315, 400.9-316, 400.9-317, 400.9-318, 400.9-401, 400.9-402, 400.9-403, 400.9-404, 400.9-405, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-501, 400.9-502, 400.9-503, 400.9-504, 400.9-505, 400.9-506, 400.9-507, 400.9-508 and 417.018, RSMo 2000, relating to business procedures regulated by the secretary of state and related matters, and to enact in lieu thereof one hundred ninety-three new sections relating to the same subject, with an emergency clause.

SECTION

A. Enacting clause.
28.681. Statements, documents or notices may be filed, transmitted and stored in an electronic format, exceptions — duplicates not required — personal signatures shall be satisfied by electronically transmitted identification, when.
28.681. Statements, documents or notices may be filed, transmitted and stored in an electronic format, exceptions — duplicates not required — personal signatures shall be satisfied by electronically transmitted identification, when.
59.005. Definitions.
59.041. Separation of offices of circuit clerk and recorder of deeds (certain second class counties).
59.042. Vote required to separate offices of circuit court clerk and recorder of deeds, when.
59.043. Circuit court clerk elected, when.
59.090. Circuit clerk to be ex officio recorder, exceptions (fourth class counties).
59.100. Bond.
59.130. Seal.
59.250. Accounting of fees collected — annual report — moneys collected property of county.
59.255. Marginal release of deeds of trust book kept, certain counties.
59.257. Deputy recorders — appointment — qualifications — certain counties.
59.260. Circuit clerk to collect and report fees as recorder, when.
59.300. Deputies, counties wherein clerk is ex officio recorder — appointment — qualifications.
59.800. Additional five-dollar fee imposed, when, distribution — fund established.
347.048. Affidavit filing required for certain limited liability companies.
347.740. Additional fee — expiration date.
351.120. Annual registration required, when.
351.127. Additional fee — expiration date.
351.220. Payment of dividends on shares of stock.
351.268. Shareholder's meeting, adjournment due to lack of quorum — postponement, adjournment defined.
351.410. Merger procedure.
351.415. Consolidation procedure.
351.430. Articles of merger or consolidation, how executed — contents — summary articles permitted, when, contents.
351.435. Certain originals or copies of articles to be delivered to secretary of state who shall issue certificate of merger or consolidation.
351.458. Merger or consolidation with foreign corporation — procedure.
351.478. Known claims against dissolved corporation.
351.482. Unknown claims against dissolved corporation.
351.608. No prior approval by state agency necessary for foreign corporations, when.
355.023. Additional fee — expiration date.
356.233. Additional fee — expiration date.
359.653. Additional fee — expiration date.
400.001-105. Territorial application of the act — parties' power to choose applicable law.
400.001-201. General definitions.
400.002-103. Definitions and index of definitions.
400.002-210. Delegation of performance — assignment of rights.
400.002-326. Sale on approval and sale or return — rights of creditors.
400.002-401. Passing of title — reservation for security — limited application of this section.
400.002-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.
400.002-716. Buyer's right to specific performance or replevin.
400.02A-103. Definitions and index of definitions.
400.02A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights.
400.02A-307. Priority of liens arising by attachment or levy on — security interest in — and other claims to goods.
400.02A-309. Lessor's and lessee's rights when goods become fixtures.
400.004-210. Security interest of collecting bank in items, accompanying documents and proceeds.
400.005-118. Security interest in a document.
400.007-503. Document of title to goods defeated in certain cases.
400.008-103. Rules for determining whether certain obligations and interests are securities or financial assets.

400.008-106. Control.
400.008-110. Applicability; choice of law.
400.008-301. Delivery.
400.008-302. Rights of purchaser.
400.008-510. Rights of purchaser of security entitlement from entitlement holder.
400.009-101. Short title.
400.009-102. Definitions and index of definitions.
400.009-103. Purchase-money security interest — application of payments — burden of establishing.
400.009-104. Control of deposit account.
400.009-105. Control of electronic chattel paper.
400.009-106. Control of investment property.
400.009-107. Control of letter-of-credit-right.
400.009-108. Sufficiency of description.
400.009-109. Scope.
400.009-110. Security interests arising under Article 2 or 2A.
400.009-118. Additional fee collected by secretary of state.
400.009-201. General effectiveness of security agreement.
400.009-202. Title to collateral immaterial.
400.009-203. Attachment and enforceability of security interest — proceeds — supporting obligations — formal requisites.
400.009-204. After-acquired property — future advances.
400.009-205. Use or disposition of collateral permissible.
400.009-206. Security interest arising in purchase or delivery of financial asset.
400.009-207. Rights and duties of secured party having possession or control of collateral.
400.009-208. Additional duties of secured party having control of collateral.
400.009-209. Duties of secured party if account of debtor has been notified of assignment.
400.009-210. Request for accounting — request regarding list of collateral or statement of account.
400.009-301. Law governing perfection and priority of security interests.
400.009-302. Law governing perfection and priority of agricultural liens.
400.009-303. Law governing perfection and priority of security interests in goods covered by certificate of title.
400.009-304. Law governing perfection and priority of security interests in deposit accounts.
400.009-305. Law governing perfection and priority of security interests in investment property.
400.009-306. Law governing perfection and priority of security interests in letter-of-credit rights.
400.009-307. Location of debtor.
400.009-308. When security interests or agriculture lien is perfected — continuity of perfection.
400.009-309. Security interest perfected upon attachment.
400.009-310. When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply.
400.009-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.
400.009-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money-perfection by permissive filing — temporary perfection without filing or transfer of possession.
400.009-313. When possession by or delivery to secured party perfects security interest without filing.
400.009-314. Perfection by control.
400.009-315. Secured party's rights on disposition of collateral and in proceeds.
400.009-316. Continued perfection of security interest following change in governing law.
400.009-317. Interests that take priority over or take free of security interest or agricultural lien.
400.009-318. No interest retained in right to payment that is sold — rights and title of seller of account or chattel paper with respect to creditors and purchasers.
400.009-319. Rights and title of consignee with respect to creditors and purchasers.
400.009-320. Buyer of goods.
400.009-321. Licensee of general intangible and lessee of goods in ordinary course of business.
400.009-322. Priorities among conflicting security interests in and agricultural liens on same collateral.
400.009-323. Future advances.
400.009-324. Priority of purchase — money security interests.
400.009-325. Priority in security interests in transferred collateral.
400.009-326. Priority of security interests created by new debtor.
400.009-327. Priority of secured interests in deposit account.
400.009-328. Priority in security interests in investment property.
400.009-329. Priority of security interests in letter-of-credit right.
400.009-330. Priority of purchaser of chattel paper or instrument.
400.009-331. Priority of rights of purchasers of instruments, documents, and securities under other articles — priority of interests in financial assets and security entitlements under Article 8.
400.009-332. Transfer of money — transfer of funds from deposit account.
400.009-333. Priority of certain liens arising by operation of law.
400.009-334. Priority of security interests in fixtures and crops.

400.009-335. Accessions.
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400.009-337. Priority of security interests in goods covered by certificate of title.
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400.009-409. Restrictions on assignment of letter-of-credit rights ineffective.
400.009-501. Filing office.
400.009-502. Contents of financing statement — record of mortgage as financing statement — time of filing financial statement.
400.009-503. Name of debtor and secured party.
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400.009-402. Secured party not obligated on contract of debtor or in tort.
400.009-403. Agreement not to assert defenses against assignee.
400.009-404. Rights acquired by assignee — claims and defenses against assignee.
400.009-405. Modification of assigned contract.
400.009-406. Discharge of account debtor — notification of assignment — identification and proof of assignment — restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.
400.009-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.
400.009-408. Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.
400.009-409. Restrictions on assignment of letter-of-credit rights ineffective.
400.009-501. Filing office.
400.009-502. Contents of financing statement — record of mortgage as financing statement — time of filing financial statement.
400.009-503. Name of debtor and secured party.
400.009-504. Indication of collateral.
400.009-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.
400.009-506. Effect of errors or omissions.
400.009-507. Effect of certain events on effectiveness of financing statement.
400.009-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.
B. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 28.681, 59.040, 59.041, 59.050, 59.090, 59.100, 59.130, 59.250, 59.255, 59.257, 59.260, 59.300, 347.189, 347.740, 351.120, 351.127, 351.220, 351.268, 351.410, 351.415, 351.430, 351.435, 351.440, 351.458, 351.478, 351.482, 355.023, 356.233, 359.653, 400.1-105, 400.1-201, 400.2-103, 400.2-210, 400.2-326, 400.2-401, 400.2-502, 400.2-716, 400.2A-103, 400.2A-303, 400.2A-307, 400.2A-309, 400.4-210, 400.7-503, 400.8-103, 400.8-106, 400.8-110, 400.8-301, 400.8-302, 400.8-510, 400.9-101, 400.9-102, 400.9-103, 400.9-104, 400.9-105, 400.9-106, 400.9-107, 400.9-108, 400.9-109, 400.9-110, 400.9-111, 400.9-112, 400.9-113, 400.9-114, 400.9-115, 400.9-116, 400.9-201, 400.9-202, 400.9-203, 400.9-204, 400.9-205, 400.9-206, 400.9-207, 400.9-208, 400.9-301, 400.9-302, 400.9-303, 400.9-304, 400.9-305, 400.9-306, 400.9-307, 400.9-308, 400.9-309, 400.9-310, 400.9-311, 400.9-312, 400.9-313, 400.9-314, 400.9-315, 400.9-316, 400.9-317, 400.9-318, 400.9-401, 400.9-402, 400.9-403, 400.9-404, 400.9-405, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-501, 400.9-502, 400.9-503, 400.9-504, 400.9-505, 400.9-506, 400.9-507, 400.9-508 and 417.018, RSMo 2000, are repealed and one hundred ninety-three new sections enacted in lieu thereof, to be known as sections 28.681, 59.005, 59.041, 59.042, 59.043, 59.090, 59.100, 59.130, 59.250, 59.255, 59.257, 59.260, 59.300, 59.800, 347.048, 347.740, 351.120, 351.127, 351.220, 351.268, 351.410, 351.415, 351.430, 351.435, 351.458, 351.478, 351.482, 351.608, 355.023, 356.233, 359.653, 400.1-105, 400.1-201, 400.2-103, 400.2-210, 400.2-326, 400.2-401, 400.2-502, 400.2-716, 400.2A-103, 400.2A-303, 400.2A-307,

400.2A-309, 400.4-210, 400.5-118, 400.7-503, 400.8-103, 400.8-106, 400.8-110, 400.8-301, 400.8-302, 400.8-510, 400.9-101, 400.9-102, 400.9-103, 400.9-104, 400.9-105, 400.9-106, 400.9-107, 400.9-108, 400.9-109, 400.9-110, 400.9-118, 400.9-201, 400.9-202, 400.9-203, 400.9-204, 400.9-205, 400.9-206, 400.9-207, 400.9-208, 400.9-209, 400.9-210, 400.9-301, 400.9-302, 400.9-303, 400.9-304, 400.9-305, 400.9-306, 400.9-307, 400.9-308, 400.9-309, 400.9-310, 400.9-311, 400.9-312, 400.9-313, 400.9-314, 400.9-315, 400.9-316, 400.9-317, 400.9-318, 400.9-319, 400.9-320, 400.9-321, 400.9-322, 400.9-323, 400.9-324, 400.9-325, 400.9-326, 400.9-327, 400.9-328, 400.9-329, 400.9-330, 400.9-331, 400.9-332, 400.9-333, 400.9-334, 400.9-335, 400.9-336, 400.9-337, 400.9-338, 400.9-339, 400.9-340, 400.9-341, 400.9-342, 400.9-401, 400.9-402, 400.9-403, 400.9-404, 400.9-405, 400.9-406, 400.9-407, 400.9-408, 400.9-409, 400.9-501, 400.9-502, 400.9-503, 400.9-504, 400.9-505, 400.9-506, 400.9-507, 400.9-508, 400.9-509, 400.9-510, 400.9-511, 400.9-512, 400.9-513, 400.9-514, 400.9-515, 400.9-516, 400.9-517, 400.9-518, 400.9-519, 400.9-520, 400.9-521, 400.9-522, 400.9-523, 400.9-524, 400.9-525, 400.9-526, 400.9-527, 400.9-601, 400.9-602, 400.9-603, 400.9-604, 400.9-605, 400.9-606, 400.9-607, 400.9-608, 400.9-609, 400.9-610, 400.9-611, 400.9-612, 400.9-613, 400.9-614, 400.9-615, 400.9-616, 400.9-617, 400.9-618, 400.9-619, 400.9-620, 400.9-621, 400.9-622, 400.9-623, 400.9-624, 400.9-625, 400.9-626, 400.9-627, 400.9-628, 400.9-629, 400.9-701, 400.9-702, 400.9-703, 400.9-704, 400.9-705, 400.9-706, 400.9-707, 400.9-708, 400.9-709, 400.9-710, 417.018, 431.202 and 1, to read as follows:

28.681. STATEMENTS, DOCUMENTS OR NOTICES MAY BE FILED, TRANSMITTED AND STORED IN AN ELECTRONIC FORMAT, EXCEPTIONS — DUPLICATES NOT REQUIRED — PERSONAL SIGNATURES SHALL BE SATISFIED BY ELECTRONICALLY TRANSMITTED IDENTIFICATION, WHEN. — 1. Any statement, document or notice required or permitted to be filed with or transmitted by the secretary of state, or any judicial decree requiring the filing of such document, except any document or judicial decree relating to his or her statutory or constitutional duties relating to elections, may be filed, transmitted, stored and maintained in an electronic format prescribed by the secretary of state. No statement, document or notice submitted or filed in an electronic format need be submitted or filed in duplicate. Nothing in this section shall require the secretary of state to accept or transmit any statement, document or notice in an electronic format.

2. Any statutory requirement that a statement, document or notice **filed with the secretary of state** be signed by any person shall be satisfied by an electronically transmitted **identification in a format prescribed by the secretary of state**. **[**signature that is:

(1) Unique to the person using it;

(2) Capable of verification;

(3) Under the sole control of the person using it;

(4) Linked to the document in such a manner that if the data is changed, the signature is invalidated; and

(5) Intended by the party using it to have the same force and effect as the use of a manual signature.**]**

3. Any requirement that a statement, document or notice filed with the secretary of state be notarized may be satisfied by a properly authenticated **[**digital signature**] identification in a format prescribed by the secretary of state**. The execution of any statement, document or notice **[**with a digital signature**]** pursuant to this subsection constitutes an affirmation under penalty of perjury that the facts stated therein are true and that such person or persons are duly authorized to execute such statement, document or notice, or are otherwise required to file such statement, document or notice.

4. The secretary of state may promulgate rules pursuant to the provisions of Section 536.024, RSMo, to effectuate the provisions of this section.

[28.681. STATEMENTS, DOCUMENTS OR NOTICES MAY BE FILED, TRANSMITTED AND STORED IN AN ELECTRONIC FORMAT, EXCEPTIONS — DUPLICATES NOT REQUIRED — PERSONAL SIGNATURES SHALL BE SATISFIED BY ELECTRONICALLY TRANSMITTED SIGNATURE, WHEN. — 1. Any statement, document or notice, except any document or judicial decree relating to the secretary of state's statutory or constitutional duties regarding elections, required or permitted to be filed with or transmitted by the secretary of state, or any judicial decree requiring the filing of such document, may be filed, transmitted, stored and maintain in an electronic format prescribed by the secretary of state. No statement, document or notice submitted or filed in an electronic format need e submitted or filed in duplicate. Nothing in this section shall require the secretary of state to accept or transmit any statement, document or notice in an electronic format.

2. Any statutory requirement that a statement, document or notice be signed by any person shall be satisfied by an electronically transmitted signature that is:

(1) Unique to the person using it;

(2) Capable of verification;

(3) Under the sole control of the person using it;

(4) Linked to the document in such a manner that if the data are changed, the signature is invalidated; and

(5) Intended by the party using it to have the same force and effect as the use of a manual signature.

3. Any requirement that a statement, document or notice filed with the secretary of state be notarized may be satisfied by a properly authenticated digital signature. The execution of any statement, document or notice with a digital signature pursuant to this subsection constitutes an affirmation under penalty of perjury that the facts stated therein are true and that such person or persons are duly authorized to execute such statement, document or notice or are otherwise required to file such statement, document or notice.**]**

59.005. DEFINITIONS. — As used in this chapter, unless the context clearly indicates otherwise, the following terms mean:

(1) "Document" or "instrument", any writing or drawing presented to the recorder of deeds for recording;

(2) "File", "filed" or "filing", the act of delivering or transmitting a document to the recorder of deeds for recording into the official public record;

(3) "Grantor" or "grantee", the names of the parties involved in the transaction used to create the recording index;

(4) "Legal description", includes but is not limited to the lot or parts thereof, block, plat or replat number, plat book and page and the name of any recorded plat or a metes and bounds description with acreage, if stated in the description, or the quarter/quarter section, and the section, township and range of property, or any combination thereof. The address of the property shall not be accepted as legal description;

(5) "Legible", all text, seals, drawings, signatures or other content within the document must be capable of producing a clear and readable image from record, regardless of the process used for recording;

(6) "Page", any writing, printing or drawing printed on one side only covering all or part of the page, not larger than eight and one-half inches in width and eleven inches in height for pages other than a plat or survey;

(7) "Record", "recorded" or "recording", the recording of a document into the official public record, regardless of the process used;

(8) "Recorder of deeds", the separate recorder of deeds in those counties where separate from the circuit clerk and the circuit clerk and ex officio recorder of deeds in those counties where the offices are combined.

59.041. SEPARATION OF OFFICES OF CIRCUIT CLERK AND RECORDER OF DEEDS (CERTAIN SECOND CLASS COUNTIES). — 1. Notwithstanding the provisions of this chapter or chapter 478, RSMo, or any other provision of law in conflict with the provisions of this section, in any county which becomes a county of the second class after September 28, 1987, and wherein the offices of circuit clerk and recorder of deeds are combined, such combination shall continue until the **[**voters**] governing body** of the county **[**authorize**] authorizes** the separation of the offices as provided in section **[**59.040**] 59.042**.

2. Notwithstanding the provisions of this chapter or chapter 478, RSMo., or any other provision of law in conflict with the provisions of this section, in any county of the third classification without a township form of government and having a population of more than 27,600 but less than 28,600 and wherein the offices of the District I circuit clerk and recorder of deeds are combined, the circuit court shall appoint such circuit clerk ex officio recorder of deeds. The circuit court may recommend to the governing body of such county whether the combined offices of the District I circuit clerk and recorder of deeds should be separated pursuant to subsection 1 of section 59.042; provided however, that if the governing body of such county authorizes the separation of offices and notwithstanding the provisions of subsection 2 of section 59.042, the office of District I clerk of the circuit court shall remain appointed by the circuit court.

59.042. VOTE REQUIRED TO SEPARATE OFFICES OF CIRCUIT COURT CLERK AND RECORDER OF DEEDS, WHEN. — In any county where the offices of clerk of the circuit court and the recorder of deeds are combined, the governing body of said county, by public vote, may authorize the separation of the two offices. Thereafter, the recorder of deeds shall be elected pursuant to section 59.020.

59.043. CIRCUIT COURT CLERK ELECTED, WHEN. — In all counties where the recorder of deeds and the clerk of the circuit court are separated after December 31, 2003, in the next November general election, and every four years thereafter, the qualified voters of such county shall elect some suitable person as circuit court clerk who shall hold office for four years until a successor is elected, commissioned and qualified. Such person shall enter upon the duties of office on the first day of January next following the election.

59.090. CIRCUIT CLERK TO BE EX OFFICIO RECORDER, EXCEPTIONS (FOURTH CLASS COUNTIES). — 1. In all counties of the fourth class, the clerks of the circuit court shall be ex officio recorder for their respective counties**, unless the governing body of such county has separated the two offices pursuant to sections 59.042 and 59.043**.

2. With respect to any county that elects to separate the offices of clerk of the circuit court and recorder of deeds, all references in statutes to the "circuit clerk ex officio recorder of deeds" shall be deemed, after the separation, to refer to either the circuit clerk or the recorder of deeds, as appropriate in the context of the reference.

59.100. BOND. — Every **[**clerk and every**]** recorder elected as provided in section 59.020, before entering upon the duties of the office as recorder, shall enter into bond to the state, in a sum set by the county commission of not less than one thousand dollars, with sufficient sureties, not less than two, to be approved by the commission, conditioned for the faithful performance of the duties enjoined on **[**him**] such person** by law as recorder, and for the delivering up of the records, books, papers, writings, seals, furniture and apparatus belonging to the office, whole, safe and undefaced, to such officer's successor.

59.130. SEAL. — [He**] Every recorder of deeds** shall have a seal of office, and shall have power to take the acknowledgment of proof of deeds and instruments of writing **[**, and to take

the relinquishments of dower of married women, and certify the same, under his seal of office, in all cases and in the same manner, with like effect, as clerks of circuit courts may do by law**]**.

59.250. ACCOUNTING OF FEES COLLECTED — ANNUAL REPORT — MONEYS COLLECTED PROPERTY OF COUNTY. — 1. The recorder of deeds in counties **[**of the third class,**]** wherein there is a separate circuit clerk and recorder, shall keep a full, true and faithful account of all fees of every kind received. **[**He**] The recorder** shall make a report thereof each year to the county commission.

2. It shall be the duty of the recorder of deeds to charge, receive and collect in all cases every fee, charge or money due **[**his**] the recorder's** office by law. **[**He**] The recorder of deeds** shall also, when he **or she** makes and files the report **[**herein**]** required **by this section** at the end of each year of his **or her** official term, verify **[**the same**] such report** by affidavit, and the report shall show the source and amount of every fee or charge collected. All fees, charges and moneys collected by the recorder of deeds shall be the property of the county. **Every recorder of deeds shall be liable on his or her official bond for all fees collected and not accounted for by him or her and paid into the county treasury as provided by this section.**

59.255. MARGINAL RELEASE OF DEEDS OF TRUST BOOK KEPT, CERTAIN COUNTIES. — The recorder of deeds in each county **[**of the third class**]** wherein the offices of circuit clerk and recorder of deeds are separate and the circuit clerk and ex officio recorder of deeds in each county **[**of the fourth class and in each county of the third class**]** wherein the offices are combined shall keep in his **or her** office **[**a well-bound book to be**] a record** known as the "Marginal Release of Deeds of Trust" in which **[**he shall enter in appropriately ruled and headed columns**] was recorded**, at the time of the execution of a marginal release of a deed of trust, **[**the following items:**] executed prior to August 28, 1991,** the names of the grantors and grantees, the book and page of release, the date of release and to whom delivered.

59.257. DEPUTY RECORDERS — APPOINTMENT — QUALIFICATIONS — CERTAIN COUNTIES. — The recorder of deeds in counties **[**of the third class,**]** wherein there is a separate circuit clerk and recorder, is entitled to appoint the deputies that the recorder of deeds, with the approval of the county commission, deems necessary for the prompt and proper discharge of the duties of his office. The deputies shall possess the **same** qualifications **[**of clerks of courts of record**] as the recorder** and may, in the name of their principal, perform the duties of the recorder of deeds, but all recorders of deeds and their sureties are responsible for the official conduct of their deputies. The deputies appointed **[**as herein provided**] pursuant to this section** shall receive the salaries that are fixed by the recorder of deeds, with the approval of the county commission, from the general revenue of the county. The appointment of every deputy shall be in writing, endorsed with an oath of office similar to that taken by the recorder of deeds and subscribed to by the deputy appointed, and filed by the recorder with the county commission.

59.260. CIRCUIT CLERK TO COLLECT AND REPORT FEES AS RECORDER, WHEN. — It shall be the duty of the circuit clerk and recorder of counties **[**of the third class,**]** wherein the offices **[**shall have been**] are** combined, **[**and in all counties of the fourth class,**]** to charge and collect for the county in all cases every fee accruing to his **or her** office as recorder of the county to which he **or she** may be entitled under the law, and shall at the end of each month, file with the county clerk a report of all fees charged and accruing to his office during such month, together with the names of persons paying such fees. It shall be the duty of the circuit clerk and recorder, upon the filing of said report, to forthwith pay over to the county treasurer, all moneys that shall have been collected by him **or her** as recorder during the month and required to be shown in such monthly report as herein provided, taking duplicate receipts therefor, one of which shall be filed with the county clerk; and every such circuit clerk and recorder shall be liable on

his **or her** official bond for all fees collected and not accounted for by him **or her**, and paid into the county treasury as herein provided.

59.300. DEPUTIES, COUNTIES WHEREIN CLERK IS EX OFFICIO RECORDER — APPOINTMENT — QUALIFICATIONS. — The circuit clerk and recorder in counties **[**of the fourth class, and in counties of the third class**]** wherein the offices **[**shall have been**]** **are** combined, as recorder of the county, may appoint in writing one or more deputies, to be approved by the circuit judge of the circuit court, which appointment with the like oath of office as their principals, to be taken by them and endorsed thereon shall be filed in the office of the county clerk. Such deputy recorders shall possess the qualifications of clerks of courts of record, and may, in the name of their principals, perform the duties of recorders of deeds, but all circuit clerks and recorders and their sureties shall be responsible for the official conduct of their deputies.

59.800. ADDITIONAL FIVE-DOLLAR FEE IMPOSED, WHEN, DISTRIBUTION — FUND ESTABLISHED. — 1. Beginning on the effective date of this act, notwithstanding any other condition precedent required by law to the recording of any instrument specified in subdivisions (1) and (2) of section 59.330, an additional fee of five dollars shall be charged and collected by every recorder of deeds in this state on each instrument recorded. The additional fee shall be distributed as follows:

(1) One dollar and twenty-five cents to the record's fund established pursuant to subsection 1 of section 59.319, provided, however, that all funds received pursuant to this section shall be used exclusively for the purchase, installation, upgrade and maintenance of modern technology necessary to operate the recorder's office in an efficient manner;

(2) One dollar and seventy-five cents to the county general revenue fund; and

(3) Two dollars to the fund established in subsection 2 of this section.

2. There is hereby established in the state treasury a revolving fund known as the "Statutory County Recorder's Fund", which shall receive funds paid to the recorders of deeds of the counties of this state pursuant to subdivision (3) of subsection 1 of this section. The state treasurer shall be custodian of the fund and shall make disbursements from the fund for the purpose of subsidizing the fees collected by counties that hereafter elect or have heretofore elected to separate the offices of clerk of the circuit court and recorder. The subsidy shall consist of the total amount of moneys collected pursuant to subdivisions (1) and (2) of subsection 1 of this section subtracted from fifty-five thousand dollars. The moneys paid to qualifying counties pursuant to this subsection shall be deposited in the county general revenue fund. For purposes of this section a "qualified county" is a county that hereafter elects or has heretofore elected to separate the offices of clerk of the circuit court and recorder and in which the office of the recorder of deeds collects less than fifty-five thousand dollars in fees pursuant to subdivisions (1) and (2) of subsection 1 of this section, on an annual basis.

3. Any unexpended balance in the fund at the end of any biennium is exempt from the provisions of section 33.080, RSMo, relating to transfer of unexpended balances to the general revenue fund.

347.048. AFFIDAVIT FILING REQUIRED FOR CERTAIN LIMITED LIABILITY COMPANIES. — Any limited liability company that owns and rents or leases real property, or owns unoccupied real property, located within any home rule city with a population of more than four hundred thousand inhabitants which is located in more than one county, shall file with that city's clerk an affidavit listing the name and address of at least one person, who has management control and responsibility for the real property owned and leased or rented by the limited liability company, or owned by the limited liability company and unoccupied.

347.740. ADDITIONAL FEE — EXPIRATION DATE. — The secretary of state may collect an additional fee of five dollars on each and every fee required in this chapter. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. **The provisions of this section shall expire on December 31, 2009.**

351.120. ANNUAL REGISTRATION REQUIRED, WHEN. — Every corporation organized pursuant to the laws of this state, including corporations organized pursuant to or subject to this chapter, and every foreign corporation licensed to do business in this state, whether such license shall have been issued pursuant to this chapter or not, other than corporations exempted from taxation by the laws of this state, shall file an annual corporation registration report stating its corporate name, the name of its registered agent and such agent's Missouri address, giving street and number, or building and number, or both, as the case may require, the name and correct business or residence address of its officers and directors, and the mailing address of the corporation's principal place of business or corporate headquarters. The annual corporation registration report shall be due on the date that the corporation's franchise tax report is due as required in section 147.020, RSMo, or within thirty days of the date of incorporation of the corporation; but any extension of time for filing the franchise tax report shall not apply to the due date of the annual corporation registration report. Any corporation that is not required to file a franchise tax report shall still be required to file an annual corporation registration report. **In the event of any change in the names and addresses of the officers and directors set forth in an annual registration report following the required date of its filing and the date of the next such required report, the corporation may correct such information by filing a certificate of correction pursuant to section 351.049.**

351.127. ADDITIONAL FEE — EXPIRATION DATE. — The secretary of state may collect an additional fee of five dollars on each and every fee required in this chapter. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. **The provisions of this section shall expire on December 31, 2009.**

351.220. PAYMENT OF DIVIDENDS ON SHARES OF STOCK. — The board of directors of a corporation may declare and the corporation may pay dividends on its **[**outstanding**]** shares in cash, property, or its own shares, subject to the following limitations and provisions:

(1) No dividend shall be declared or paid at a time when the net assets of the corporation are less than its stated capital or when the payment thereof would reduce the net assets of the corporation below its stated capital;

(2) If a dividend is declared out of the paid-in surplus of the corporation, whether created by reduction of stated capital or otherwise, the limitations contained in section 351.210 shall apply;

(3) If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is declared an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend;

(4) If a dividend is declared payable in its own shares, without par value, and such shares have a preferential right in the assets of the corporation in the event of its involuntary liquidation, such shares shall be issued at the liquidation value thereof, and there shall be transferred to stated capital at the time such dividend is declared, an amount of surplus equal to the aggregate preferential amount payable upon such shares in the event of involuntary liquidation;

(5) If a dividend is declared payable in its own shares without par value and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, such shares shall be issued at such value as shall be fixed by the board of directors

by resolution at the time such dividend is declared, and there shall be transferred to stated capital, at the time such dividend is declared, an amount of surplus equal to the aggregate value so fixed in respect of such shares, and the amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends concurrently with payment thereof;

(6) A split-up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this section;

(7) No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation.

351.268. SHAREHOLDER'S MEETING, ADJOURNMENT DUE TO LACK OF QUORUM — POSTPONEMENT, ADJOURNMENT DEFINED. — 1. In addition to the provisions of sections 351.265 and 351.267 regarding the adjournment of shareholders meetings at which a quorum is not present, unless the bylaws provide to the contrary, a meeting may be otherwise successively adjourned to a specified date not longer than ninety days after such adjournment or to another place. Notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than ninety days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the date and place of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

2. A shareholder's meeting may be successively postponed by resolution of the board of directors, unless otherwise provided in the bylaws, to a specified date up to a date ninety days after such postponement or to another place, provided **[**public**]** notice **of the date and place of the postponed meeting, which may be by public notice, is given to each shareholder of record entitled to vote at the meeting [**of such postponement is given**]** prior to the date previously scheduled for such meeting. **[**Such notice shall state the new date and place of such postponed meeting.**]**

3. For purposes of this chapter, "adjournment" means a delay in the date, which may also be combined with a change in the place, of a meeting after the meeting has been convened; "postponement" means a delay in the date, which may be combined with a change in the place, of the meeting before it has been convened, but after the time and place thereof have been set forth in a notice delivered or given to shareholders; and public notice shall be deemed to have been given if a public announcement is made by press release reported by a national news service or in a publicly available document filed with the United States Securities and Exchange Commission.

351.410. MERGER PROCEDURE. — Any two or more domestic corporations may merge into one of the corporations in the following manner: The board of directors of each corporation shall approve a plan of merger and direct the submission of the plan to a vote at a meeting of shareholders. The plan of merger shall set forth:

(1) The names of the corporations proposing to merge, **which are herein designated as the "constituent corporations",** and the name of the corporation into which they propose to merge, which is herein designated as "the surviving corporation";

(2) The terms and conditions of the proposed merger and the mode of carrying it into effect;

(3) The manner and basis of converting the shares of each merging corporation into cash, property, shares or other securities or obligations of the surviving corporation, or (if any shares of any merging corporation are not to be converted solely into cash, property, shares or other securities or obligations of the surviving corporation) into cash, property, shares or other securities or obligations of any other domestic or foreign corporation, which cash, property, shares or other securities or obligations of any other domestic or foreign corporation may be in

addition to or completely in lieu of cash, property, shares or other securities or obligations of the surviving corporation;

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by the merger;

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

351.415. CONSOLIDATION PROCEDURE. — Any two or more domestic corporations may consolidate into a new domestic corporation in the following manner: The board of directors of each corporation shall approve a plan of consolidation and direct the submission of the plan to a vote at a meeting of shareholders. The plan of consolidation shall set forth:

(1) The names of the corporations proposing to consolidate, **which are herein designated as the "constituent corporations"** and the name of the new corporation into which they propose to consolidate, which is herein designated as "the new corporation";

(2) The terms and conditions of the proposed consolidation and the mode of carrying it into effect;

(3) The manner and basis of converting the shares of each consolidating corporation into cash, property, shares, or other securities, or obligations of the new corporation, or (if any shares of any consolidating corporation are not to be converted solely into cash, property, shares or other securities or obligations of the new corporation) into cash, property, shares or other securities or obligations of any other domestic or foreign corporation, which cash, property, shares or other securities or obligations of any other domestic or foreign corporation may be in addition to or completely in lieu of cash, property, shares or other securities or obligations of the new corporation;

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

351.430. ARTICLES OF MERGER OR CONSOLIDATION, HOW EXECUTED — CONTENTS — SUMMARY ARTICLES PERMITTED, WHEN, CONTENTS. — **1.** Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and verified by him, and the corporate seal of each corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth:

(1) The plan of merger or the plan of consolidation;

(2) As to each corporation, the number of shares outstanding;

(3) As to each corporation, the number of shares voted for and against such plan, respectively.

2. In lieu of the delivery of articles of merger or articles of consolidation as required pursuant to section 351.435, summary articles of merger or summary articles of consolidation, executed pursuant to section 351.046, may be filed pursuant to section 351.046 to be effective pursuant to section 351.048. Such summary articles shall state:

(1) The name and state of incorporation of each of the constituent corporations;

(2) That a plan of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations as required by this chapter;

(3) The name of the surviving corporation in the case of a merger or the new corporation in the case of a consolidation;

(4) In the case of a merger, such amendments or changes in the articles of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be the articles of incorporation;

(5) In the case of a consolidation, that the articles of incorporation of the new corporation shall be as set forth in an attachment to the summary articles;

(6) That the executed plan of merger or consolidation is on file at the principal place of business of the surviving corporation in the case of a merger, or new corporation in the case of a consolidation stating the address thereof; and

(7) That a copy of a plan of merger or consolidation will be furnished by the surviving corporation in the case of a merger or the new corporation in the case of a consolidation, on request and without cost, to any shareholder of any constituent corporation.

351.435. CERTAIN ORIGINALS OR COPIES OF ARTICLES TO BE DELIVERED TO SECRETARY OF STATE WHO SHALL ISSUE CERTIFICATE OF MERGER OR CONSOLIDATION. — Duplicate originals or the original and a copy of the articles of merger or articles of consolidation shall be delivered to the secretary of state **by the surviving corporation in the case of a merger or the new corporation in the case of a consolidation. The articles shall be executed pursuant to section 351.430, filed pursuant to section 351.046 and effective pursuant to section 351.048**. If the secretary of state finds that the articles conform to law, he shall, when all required taxes or fees have been paid, file the same, keeping the original as a permanent record, and issue a certificate of merger or a certificate of consolidation, to which he shall affix the copy of such articles.

351.458. MERGER OR CONSOLIDATION WITH FOREIGN CORPORATION — PROCEDURE. — 1. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized;

(2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to do business in this state, and regardless of whether or not it is to do business in this state it shall file with the secretary of state of this state:

(a) An agreement that it will promptly pay to the dissenting shareholders of any domestic corporation which is a party to the merger or consolidation the amount, if any, to which they shall be entitled under provisions of this chapter with respect to the rights of dissenting shareholders, and

(b) An agreement that it may be served with process in this state, and an irrevocable appointment of the secretary of state of this state as its agent to accept service of process, in any proceeding based upon any cause of action against any such domestic corporation arising in this state prior to the issuance of the certificate of merger or the certificate of consolidation by the secretary of state of this state, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

2. The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations; except, if the surviving or new corporation is to be governed by the laws of any state other than this state, to the extent that the laws of the other state shall otherwise provide.

3. **[**If the surviving or new corporation is to be governed by the laws of any state other than this state, the secretary of state of this state may nevertheless in his discretion issue a certificate of merger or certificate of consolidation in the manner provided in section 351.435.

4.**]** If the surviving or new corporation is a foreign corporation, the effective date of such merger or consolidation shall be the date on which the same becomes effective in the state of domicile of such surviving or new corporation and the provisions of section 351.440 shall not apply. **A document from the state of the domicile of the surviving corporation in the case of a merger, or the new corporation in the case of a consolidation, certifying that the merger or consolidation has become effective in such state shall be a requirement for the merger or consolidation becoming effective in this state.**

351.478. KNOWN CLAIMS AGAINST DISSOLVED CORPORATION. — 1. After dissolution is authorized **pursuant to sections 351.462, 351.464 or 351.466, or it has been dissolved pursuant to section 351.486,** a corporation shall dispose of the known claims against it by following the procedure described in this section.

2. The corporation shall notify its known claimants in writing by United States Postal Service of the dissolution at any time after dissolution is authorized. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred eighty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

3. Other rules of law, including rules on the permissibility of third-party claims, to the contrary notwithstanding, a claim against a corporation dissolved without fraudulent intent is barred:

(1) If a claimant who was given written notice pursuant to subsection 2 of this section does not deliver the claim to the corporation by the deadline;

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence proceedings to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

5. For purposes of this section, "fraudulent intent" shall be established if it is shown that the sole or primary purpose of the authorization for dissolution was to defraud shareholders, creditors or others.

351.482. UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATION. — 1. After dissolution is authorized **pursuant to sections 351.462, 351.464 or 351.466, or it has been dissolved pursuant to section 351.486**, a corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

2. The notice shall:

(1) Be published one time in a newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is or was last located;

(2) Be published one time in a publication of statewide circulation whose audience is primarily persons engaged in the practice of law in this state and which is published not less than four times per year;

(3) At the request of the corporation, be published by the secretary of state in an electronic format accessible to the public;

(4) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(5) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

3. Other rules of law, including rules on the permissibility of third-party claims, to the contrary notwithstanding, if a corporation dissolved without fraudulent intent publishes notices in accordance with subsection 2 of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of whichever of the notices was published last:

(1) A claimant who did not receive written notice pursuant to section 351.478;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced pursuant to this section only:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims pursuant to this section may not exceed the total amount of assets distributed to the shareholder.

5. For purposes of this section, "fraudulent intent" shall be established if it is shown that the sole or primary purpose of the authorization for dissolution or the dissolution was to defraud shareholders, creditors or others.

351.608. NO PRIOR APPROVAL BY STATE AGENCY NECESSARY FOR FOREIGN CORPORATIONS, WHEN. — Notwithstanding any provision of law to the contrary in this or any other chapter, no foreign corporation doing business in this state shall be required to obtain prior approval of any state agency to acquire, directly or indirectly, the stock or bonds of another foreign corporation incorporated for, or engaged in, the same or a similar business which does not conduct business in this state. Nothing herein shall be construed to limit or impair any state agency from exercising any lawful authority as may be necessary to protect the interests of the public in this state with respect to any such acquisition. This provision is enacted in part to clarify and specify the law existing prior to August 28, 2001.

355.023. ADDITIONAL FEE — EXPIRATION DATE. — The secretary of state may collect an additional fee of five dollars on each and every fee required in this chapter. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. **The provisions of this section shall expire on December 31, 2009.**

356.233. ADDITIONAL FEE — EXPIRATION DATE. — The secretary of state may collect an additional fee of five dollars on each and every fee required in this chapter. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. **The provisions of this section shall expire on December 31, 2009.**

359.653. ADDITIONAL FEE — EXPIRATION DATE. — The secretary of state may collect an additional fee of five dollars on each and every fee required in this chapter. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. **The provisions of this section shall expire on December 31, 2009.**

400.001-105. TERRITORIAL APPLICATION OF THE ACT — PARTIES' POWER TO CHOOSE APPLICABLE LAW. — (1) Except as provided hereafter in this section, when a transaction bears

a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 400.2-402.

Applicability of the Article on Leases. Sections 400.2A-105 and 400.2A-106.

Applicability of the Article on Bank Deposits and Collections. Section 400.4-102.

Letter of credit. Section 400.5-116.

Bulk transfers subject to the Article on Bulk Transfers. Section 400.6-102.

Applicability of the Article on Investment Securities. Section 400.8-110.

[Perfection provisions of the Article on Secured Transactions. Section 400.9-103.**]**

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests. Sections 400.9-301 through 400.9-307.

400.001-201. GENERAL DEFINITIONS. — Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 400.1-205 and 400.2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 400.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person **[**who**] that buys goods** in good faith and without knowledge that the sale **[**to him is in violation of the ownership rights or security interest of a third party**] violates the rights of another person** in the goods **[**buys**], and** in **the** ordinary course from a person**, other than a pawnbroker,** in the business of selling goods of that kind **[**but does not include a pawnbroker**]**. **[**All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons**] A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person** in the business of selling goods of that kind. **[**"Buying" may be**] A buyer in ordinary course of business may buy** for cash **[**or**],** by exchange of other property or on secured or unsecured credit and **[**includes receiving**] may acquire** goods or documents of title under a preexisting contract for sale **[**but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt**]**. **Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2**

may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for, or in total or partial satisfaction of, a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his **or her** debts in the ordinary course of business or cannot pay his **or her** debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when

(a) **[**he**] a person** has actual knowledge of it; or

(b) **[**he**] a person** has received a notice or notification of it; or

(c) from all the facts and circumstances known to him **or her** at the time in question he **or she** has reason to know that it exists. A person "knows" or has "knowledge" of a fact when **[**he**]** a person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to **[**his**] a person's** attention, or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by **[**him**] a person** as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to **[**his**] an individual's** attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of **[**his**] an individual's** regular duties or unless he **or she** has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this chapter.

(30) "Person" includes an individual or an organization (see section 400.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, **security interest,** issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. **[**The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 400.2-401) is limited in effect to a reservation of a "security interest".**]** The term also includes any interest of a **consignor and a** buyer of accounts **[**or**],** chattel paper **[**which**], a payment intangible, or a promissory note in a transaction that** is subject to article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 400.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article 9. **[**Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (section 400.2-326).**] Except as otherwise provided in section 400.2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by**

complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 400.2-401) is limited in effect to a reservation of a "security interest".

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(c) the lessee has an option to renew the lease or to become the owner of the goods,

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed. For purposes of subsection (37):

(x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(z) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Special property" means identifiable property in which the holder has only a qualified, temporary, or limited interest.

[(40)**] (41)** "Surety" includes guarantor.

[(41)**] (42)** "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

[(42)**] (43)** "Term" means that portion of an agreement which relates to a particular matter.

[(43)**] (44)** "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

[(44)**] (45)** "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 400.3-303, 400.4-208 and 400.4-209) a person gives "value" for rights if he **or she** acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

[(45)**] (46)** "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

[(46)**] (47)** "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

400.002-103. DEFINITIONS AND INDEX OF DEFINITIONS. — (1) In this article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance". Section 400.2-606.

"Banker's credit". Section 400.2-325.

"Between merchants". Section 400.2-104.

"Cancellation". Section 400.2-106(4).

"Commercial unit". Section 400.2-105.

"Confirmed credit". Section 400.2-325.

"Conforming to contract". Section 400.2-106.

"Contract for sale". Section 400.2-106.

"Cover". Section 400.2-712.

"Entrusting". Section 400.2-403.

"Financing agency". Section 400.2-104.

"Future goods". Section 400.2-105.

"Goods". Section 400.2-105.

"Identification". Section 400.2-501.

"Installment contract". Section 400.2-612.

"Letter of credit". Section 400.2-325.

"Lot". Section 400.2-105.

"Merchant". Section 400.2-104.

"Overseas". Section 400.2-323.

"Person in position of seller". Section 400.2-707.

"Present sale". Section 400.2-106.

"Sale". Section 400.2-106.
"Sale on approval". Section 400.2-326.
"Sale or return". Section 400.2-326.
"Termination". Section 400.2-106.
(3) The following definitions in other articles apply to this article:
"Check". Section 400.3-104.
"Consignee". Section 400.7-102.
"Consignor". Section 400.7-102.
"Consumer goods". Section **[**400.9-109**] 400.9- 102**.
"Dishonor". Section **[**400.3-507**] 400.3-502**.
"Draft". Section 400.3-104.
(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

400.002-210. DELEGATION OF PERFORMANCE — ASSIGNMENT OF RIGHTS. — (1) A party may perform his **or her** duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his **or her** original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him **or her** by his **or her** contract, or impair materially his **or her** chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his **or her** entire obligation can be assigned despite agreement otherwise.

(3) **The creation, attachment, perfection or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.**

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

[(4)**] (5)** An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him **or her** to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

[(5)**] (6)** The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his **or her** rights against the assignor demand assurances from the assignee (section 400.2-609).

400.002-326. SALE ON APPROVAL AND SALE OR RETURN — RIGHTS OF CREDITORS. — (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) **[**Except as provided in subsection (3),**]** Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) **[**Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the article on secured transactions (article 9).

(4)**]** Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (section 400.2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 400.2-202).

400.002-401. PASSING OF TITLE — RESERVATION FOR SECURITY — LIMITED APPLICATION OF THIS SECTION. — Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 400.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (article 9), title **and/or ownership** to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his **or her** performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him **or her** to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he **or she** delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

400.002-502. BUYER'S RIGHT TO GOODS ON SELLER'S REPUDIATION, FAILURE TO DELIVER, OR INSOLVENCY. — (1) Subject to **[**subsection**]** **subsections** (2) **and (3), of this section** and even though the goods have not been shipped**,** a buyer who has paid a part or all of the price of goods in which he **or she** has a special property under the provisions of section 400.2-501 may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if**:**

(a) in the case of goods bought for personal, family or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) **The buyer's right to recover the goods under subdivision (a) of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.**

(3) If the identification creating his **or her** special property has been made by the buyer he **or she** acquires the right to recover the goods only if they conform to the contract for sale.

400.002-716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN. — (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he **or she** is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. **In the case of goods bought for personal, family or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.**

400.02A-103. DEFINITIONS AND INDEX OF DEFINITIONS. — (1) In this Article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him **or her** is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for option to renew or buy, do not exceed fifty thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessor (aa) informs the lessee in writing of the identity of the supplier, unless the lessee has selected the supplier and directed the lessor to purchase the goods from the supplier, (bb) informs the lessee in writing that the lessee may have rights under the contract evidencing the lessor's purchase of the goods, and (cc) advised the lessee in writing to contact the supplier for a description of any such rights, or

(D) the lease contract discloses all warranties and other rights provided to the lessee by the lessor and supplier in connection with the lease contract and informs the lessee that there are no warranties or other rights provided to the lessee by the lessor and supplier other than those disclosed in the lease contract.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures **[(] as defined in** Section 400.2A-309**[)]**, but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him **or her** is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes

receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Accessions". Section 400.2A-310(1).

"Construction mortgage". Section 400.2A-309(1)(d).

"Encumbrance". Section 400.2A-309(1)(e).

"Fixtures". Section 400.2A-309(1)(a).

"Fixture filing". Section 400.2A-309(1)(b).

"Purchase money lease". Section 400.2A-309(1)(c).

(3) The following definitions in other articles apply to this Article:

"Account". Section **[**400.9-106**] 400.9- 102(a)(2)**.

"Between merchants". Section 400.2-104(3).

"Buyer". Section 400.2-103(1)(a).

"Chattel paper". Section **[**400.9-105(1)(b)**] 400.9-102(a)(10)**.

"Consumer goods". Section **[**400.9-109(1)**] 400.9- 102(a)(22)**.

"Document". Section **[**400.9-105(1)(f)**] 400.9- 102(a)(29)**.

"Entrusting". Section 400.2-403(3).

"General **[**intangibles**] intangible**". Section **[**400.9-106**] 400.9-102(a)(41)**.

"Good faith". Section 400.2-103(1)(b).

"Instrument". Section **[**400.9-105(1)(i)**] 400.9- 102(a)(46)**.

"Merchant". Section 400.2-104(1).

"Mortgage". Section **[**400.9-105(1)(j)**] 400.9- 102(a)(54)**.

"Pursuant to commitment". Section **[**400.9-105(1)(k)**] 400.9-102(a)(68)**.

"Receipt". Section 400.2-103(1)(c).

"Sale". Section 400.2-106(1).

"Sale on approval". Section 400.2-326.

"Sale or return". Section 400.2-326.

"Seller". Section 400.2-103(1)(d).

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

400.02A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS — DELEGATION OF PERFORMANCE — TRANSFER OF RIGHTS. — (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of Section **[**400.9-102(1)(b)**] 400.9-109(a)(2)**.

(2) Except as provided in **[**subsections**] subsection** (3) and **[**(4)**] section 400.9-407**, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection **[**(5)**] (4)**, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) **[**A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4)**]** A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection **[**(5)**] (4)**.

[(5)**] (4)** Subject to **[**subsections**] subsection** (3) and **[**(4)**] section 400.9-407**:

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in Section 400.2A-501(2);

(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

[(6)**] (5)** A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights, and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform

those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

[(7)**] (6)** Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

400.02A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON — SECURITY INTEREST IN — AND OTHER CLAIMS TO GOODS. — (1) Except as otherwise provided in section 400.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in **[**subsections**] subsection** (3) **[**and (4)**]** and in sections 400.2A-306 and 400.2A-308, a creditor of a lessor takes subject to the lease contract unless**[**:

(a)**]** the creditor holds a lien that attached to the goods before the lease contract became enforceable**[**,

(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods which was perfected (Section 400.9-303) before the lease contract became enforceable**]**.

(3) **[**A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (Section 400.9-303) and the lessee knows of its existence.**] Except as otherwise provided in sections 400.9-317, 400.9-321 and 400.9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.**

[(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.**]**

400.02A-309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES. — (1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a **record of a** mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Section **[**400.9-402(5)**] 400.9-502(a) and (b)**;

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this Article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this Article of ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture

filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions (Article 9).

400.004-210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. — (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) no security agreement is necessary to make the security interest enforceable (Section **[**400.9-203(1)(a)**] 400.9-203(b)(3)(A)**);

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

400.005-118. SECURITY INTEREST IN A DOCUMENT. — (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to article 9, but:

(1) a security agreement is not necessary to make the security interest enforceable under section 400.9-203(b)(3);

(2) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

400.007-503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES. — (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his **or her** nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 400.7-403) or with power of disposition under this chapter (sections 400.2-403 and **[**400.9-307**] 400.9-320**) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his **or her** nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under section 400.7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

400.008-103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. — (a) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by article 3 of this chapter, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 of this chapter is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in section **[**400.9-115**]** **400.9-102(a)(14)**, is not a security or a financial asset.

400.008-106. CONTROL. — (a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:

(1) The purchaser becomes the entitlement holder; **[**or**]**

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder**; or**

(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c)**[**(2)**]** or (d)**[**(2)**]** has control even if the registered owner in the case of subsection (c)**[**(2)**]** or the entitlement holder in the case of subsection (d)**[**(2)**]** retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement

even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

400.008-110. APPLICABILITY; CHOICE OF LAW. — (a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;

(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

(5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

(1) Acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5).

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder **[**specifies that it is governed by the law of a particular jurisdiction**] governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or chapter 400**, that jurisdiction is the securities intermediary's jurisdiction;

(2) If **paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.**

(3) If neither paragraph (1) nor paragraph (2) applies, and an agreement between the securities intermediary and its entitlement holder **[**does not specify the governing law as provided in paragraph (1), but**] governing the securities account** expressly **[**specified**] provides** that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;

[(3)**] (4)** If **[**an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2)**] none of the preceding paragraphs apply**, the securities intermediary's jurisdiction is the jurisdiction in which **[**is located**]** the office identified in an account statement as the office serving the entitlement holder's account **is located**.

[(4)**]** **(5)** If **[**an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (3)**] none of the preceding paragraphs apply**, the securities intermediary's jurisdiction is the jurisdiction in which **[**is located**]** the chief executive office of the securities intermediary **is located**.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

400.008-301. DELIVERY. — (a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and **[**has been**] is (i) registered in the name of the purchaser; (ii) payable to the order of the purchaser; or (iii)** specially indorsed to the purchaser by an effective indorsement **and has not been indorsed to the securities intermediary or in blank**.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

400.008-302. RIGHTS OF PURCHASER. — (a) Except as otherwise provided in subsections (b) and (c), **[**upon delivery**] a purchaser** of a certificated or uncertificated security **[**to a purchaser, the purchaser**]** acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

400.008-510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER. — (a) **In a case not covered by the priority rules in article 9 or the rules stated in subsection (c),** an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under section 400.8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in article 9 of this chapter, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. **Except as otherwise provided in subsection (d),** purchasers who have control rank **[**equally, except that a**] according to priority in time of:**

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 400.8-106(d)(1);

(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 400.8-106(d)(2); or

(3) if the purchaser obtained control through another person under section 400.8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

400.009-101. SHORT TITLE. — This article may be cited as "Uniform Commercial Code-Secured Transactions".

400.009-102. DEFINITIONS AND INDEX OF DEFINITIONS. — (a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost;

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card;

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper;

(4) "Accounting", except as used in "accounting for", means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail;

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property;

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction;

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record;

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies;

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like;

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral;

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods. The term does not include charters or other contracts involving the use or hire of a vessel. If a transaction is evidenced both by a security agreement or lease and by an instrument or series of instruments, the group of records taken together constitutes chattel paper;

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment;

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual;

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer;

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer;

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books;

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law;

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule;

(19) "Consignee" means a merchant to which goods are delivered in a consignment;

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation;

(21) "Consignor" means a person that delivers goods to a consignee in a consignment;

(22) "Consumer debtor" means a debtor in a consumer transaction;

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes;

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation;

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes;

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions;

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement;

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee;

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument;

(30) "Document" means a document of title or a receipt of the type described in section 400.7-201(2);

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium;

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property;

(33) "Equipment" means goods other than inventory, farm products, or consumer goods;

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states;

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation;

(36) "File number" means the number assigned to an initial financing statement pursuant to section 400.9-519(a);

(37) "Filing office" means an office designated in section 400.9-501 as the place to file a financing statement;

(38) "Filing-office rule" means a rule adopted pursuant to section 400.9-526;

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement;

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 400.9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures;

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law;

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software;

(43) "Good faith" means honesty in fact;

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction;

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States;

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided;

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card;

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business;

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account;

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized;

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit;

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment;

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code;

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral;

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation;

(56) "New debtor" means a person that becomes bound as debtor under section 400.9-203(d) by a security agreement previously entered into by another person;

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation;

(58) "Noncash proceeds" means proceeds other than cash proceeds;

(59) "Notice" means a properly filed financing statement;

(60) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit;

(61) "Original debtor" means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 400.9-203(d);

(62) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation;

(63) "Person related to", with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual;

(64) "Person related to", with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) The spouse of an individual described in subparagraph (A), (B), or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual;

(65) "Proceeds" means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral;

(66) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds;

(67) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 400.9-620, 400.9-621 and 400.9-622;

(68) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation;

(69) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form;

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized;

(71) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either;

(72) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under sections 400.2-401, 400.2-505, 400.2-711(3), 400.2A-508(5), 400.4-210 or 400.5-118;

(73) "Security agreement" means an agreement that creates or provides for a security interest;

(74) "Send", in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A);

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods;

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property;

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium;

(79) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective;

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other articles apply to this article:

"Applicant"	**Section 400.5-102.**
"Beneficiary"	**Section 400.5-102.**
"Broker"	**Section 400.8-102.**
"Certificated security"	**Section 400.8-102.**
"Check"	**Section 400.3-104.**
"Clearing corporation"	**Section 400.8-102.**
"Contract for sale"	**Section 400.2-106.**
"Customer"	**Section 400.4-104.**
"Entitlement holder"	**Section 400.8-102.**
"Financial asset"	**Section 400.8-102.**
"Holder in due course"	**Section 400.3-302.**
"Issuer" (with respect to a letter of credit or letter-of-credit right)	**Section 400.5-102.**
"Issuer" (with respect to a security)	**Section 400.8-201.**
"Lease"	**Section 400.2A-103.**
"Lease agreement"	**Section 400.2A-103.**
"Lease contract"	**Section 400.2A-103.**
"Leasehold interest"	**Section 400.2A-103.**
"Lessee"	**Section 400.2A-103.**
"Lessee in ordinary course of business"	**Section 400.2A-103.**
"Lessor"	**Section 400.2A-103.**
"Lessor's residual interest"	**Section 400.2A-103.**
"Letter of credit"	**Section 400.5-102.**
"Merchant"	**Section 400.2-104.**
"Negotiable instrument"	**Section 400.3-104.**
"Nominated person"	**Section 400.5-102.**
"Note"	**Section 400.3-104.**
"Proceeds of a letter of credit"	**Section 400.5-114.**
"Prove"	**Section 400.3-103.**
"Sale"	**Section 400.2-106.**
"Securities account"	**Section 400.8-501.**
"Securities intermediary"	**Section 400.8-102.**
"Security"	**Section 400.8-102.**
"Security certificate"	**Section 400.8-102.**
"Security entitlement"	**Section 400.8-102.**
"Uncertificated security"	**Section 400.8-102.**

(c) This section contains general definitions and principles of construction and interpretation applicable throughout sections 400.9-103 to 400.9-708.

400.009-103. PURCHASE-MONEY SECURITY INTEREST — APPLICATION OF PAYMENTS — BURDEN OF ESTABLISHING. — (a) In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

400.009-104. CONTROL OF DEPOSIT ACCOUNT. — (a) A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

400.009-105. CONTROL OF ELECTRONIC CHATTEL PAPER. — A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

400.009-106. CONTROL OF INVESTMENT PROPERTY. — (a) A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 400.8-106.

(b) A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

400.009-107. CONTROL OF LETTER-OF-CREDIT-RIGHT. — A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 400.5-114(c) or otherwise applicable law or practice.

400.009-108. SUFFICIENCY OF DESCRIPTION. — (a) Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e), a type of collateral defined in chapter 400;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in chapter 400 is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

400.009-109. SCOPE. — (a) Except as otherwise provided in subsections (c) and (d), this article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) A consignment;

(5) A security interest arising under section 400.2-401, 400.2-505, 400.2-711(3) or 400.2A-508(5), as provided in section 400.9-110; and

(6) A security interest arising under section 400.4-210 or 400.5-118.

(b) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) This article does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this article;

(2) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(3) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 400.5-114.

(d) This article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 400.9-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary, or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:

(A) Section 400.9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 400.9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in sections 400.9-203 and 400.9-308;

(B) Fixtures in section 400.9-334;

(C) Fixture filings in sections 400.9-501, 400.9-502, 400.9-512, 400.9-516 and 400.9-519; and

(D) Security agreements covering personal and real property in section 400.9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds;

(13) An assignment of a deposit account in a consumer transaction, but sections 400.9-315 and 400.9-322 apply with respect to proceeds and priorities in proceeds; or

(14) An assignment of a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended from time to time; or

(15) An assignment of a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended from time to time; or

(16) A transfer by a government or governmental subdivision or agency.

400.009-110. SECURITY INTERESTS ARISING UNDER ARTICLE 2 OR 2A. — A security interest arising under sections 400.2-401, 400.2-505, 400.2-711(3) or 400.2A-508(5) is subject to this article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if section 400.9-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by article 2 or 2A; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

400.009-118. ADDITIONAL FEE COLLECTED BY SECRETARY OF STATE. — The secretary of state may collect an additional fee of five dollars on each and every fee paid to the secretary of state as required in chapter 400.9. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. The provisions of this section shall expire on December 31, 2009.

PART 2
EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

400.009-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT. — (a) Except as otherwise provided in chapter 400, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers.

(c) In case of conflict between this article and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) This article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b); or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

400.009-202. TITLE TO COLLATERAL IMMATERIAL. — Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

400.009-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST — PROCEEDS — SUPPORTING OBLIGATIONS — FORMAL REQUISITES. — (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under section 400.9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 400.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under section 400.9-104, 400.9-105, 400.9-106 or 400.9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to section 400.4-210 on the security interest of a collecting bank, section 400.5-118 on the security interest of a letter-of-credit issuer or nominated person, section 400.9-110 on a security interest arising under article 2 or 2A, and section 400.9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 400.9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

400.009-204. AFTER-ACQUIRED PROPERTY — FUTURE ADVANCES. — (a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) A commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

400.009-205. USE OR DISPOSITION OF COLLATERAL PERMISSIBLE. — (a) A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce, or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

400.009-206. SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET. — (a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) In the ordinary course of business is transferred by delivery with any necessary endorsement or assignment; and

(B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) The security interest described in subsection (c) secures the obligation to make payment for the delivery.

400.009-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL. — (a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the party having possession of the collateral;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 400.9-104, 400.9-105, 400.9-106 or 400.9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) do not apply.

400.009-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL. — (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under section 400.9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under section 400.9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 400.9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under section 400.8-106(d)(2) or 400.9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under section 400.9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

400.009-209. DUTIES OF SECURED PARTY IF ACCOUNT OF DEBTOR HAS BEEN NOTIFIED OF ASSIGNMENT. — (a) Except as otherwise provided in subsection (c), this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 400.9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

400.009-210. REQUEST FOR ACCOUNTING — REQUEST REGARDING LIST OF COLLATERAL OR STATEMENT OF ACCOUNT. — (a) In this section:

(1) "Request" means a record of a type described in paragraph (2),(3), or (4);

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request;

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request;

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's security interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

PART 3
PERFECTION AND PRIORITY

400.009-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. — Except as otherwise provided in sections 400.9-303 through 400.9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral;

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral;

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral;

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

400.009-302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS. — While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

400.009-303. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY CERTIFICATE OF TITLE. — (a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

(d) When a notice of lien is filed in accordance with chapter 301 or 306, RSMo, then the lien is perfected and chapter 400, RSMo, shall not govern perfection or nonperfection or the priority of the lien even though a valid application for a certificate of title and the applicable fee was not delivered to the appropriate authority or the certificate of title was not issued by such authority.

400.009-304. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS. — (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or chapter 400, that jurisdiction is the bank's jurisdiction;

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction;

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction;

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located;

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

400.009-305. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. — (a) Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby;

(2) The local law of the issuer's jurisdiction as specified in section 400.8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security;

(3) The local law of the securities intermediary's jurisdiction as specified in section 400.8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account;

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or chapter 400, that jurisdiction is the commodity intermediary's jurisdiction;

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located;

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

400.009-306. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS. — (a) Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 400.5-116.

(c) This section does not apply to a security interest that is perfected only under section 400.9-308(c).

400.009-307. LOCATION OF DEBTOR. — (a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence;

(2) A debtor that is an organization and has only one place of business is located at its place of business;

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

400.009-308. WHEN SECURITY INTERESTS OR AGRICULTURE LIEN IS PERFECTED — CONTINUITY OF PERFECTION. — (a) Except as otherwise provided in this section and section 400.9-309, a security interest is perfected if it has attached and all of the applicable

requirements for perfection in sections 400.9-310 through 400.9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 400.9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

400.009-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT. — The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in section 400.9-311(b) with respect to consumer goods that are subject to a statute or treaty described in section 400.9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under section 400.2-401, 400.2-505, 400.2-711(3) or 400.2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under section 400.4-210;

(8) A security interest of an issuer or nominated person arising under section 400.5-118;

(9) A security interest arising in the delivery of a financial asset under section 400.9-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

400.009-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN — SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY. — (a) Except as otherwise provided in subsection (b) and section 400.9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under section 400.9-308(c), (d), (e) or (f);

(2) That is perfected under section 400.9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in section 400.9-311(a);

(4) In goods in possession of a bailee which is perfected under section 400.9-312(d)(1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under section 400.9-312(e), (f), or (g);

(6) In collateral in the secured party's possession under section 400.9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 400.9-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under section 400.9-314;

(9) In proceeds which is perfected under section 400.9-315; or

(10) That is perfected under section 400.9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

400.009-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES. — (a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 400.9-310(a);

(2) Sections 301.600 to 301.661 and section 400.2A-304; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and sections 400.9-313 and 400.9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and section 400.9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

400.009-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY-PERFECTION BY PERMISSIVE FILING

— TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. — (a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in section 400.9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under section 400.9-314;

(2) And except as otherwise provided in section 400.9-308(c), a security interest in a letter-of-credit right may be perfected only by control under section 400.9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under section 400.9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

400.009-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. — (a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 400.8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 400.9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person

other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 400.8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) or section 400.8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

400.009-314. PERFECTION BY CONTROL. — (a) A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under section 400.9-104, 400.9-105, 400.9-106 or 400.9-107.

(b) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under section 400.9-104, 400.9-105 or 400.9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 400.9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

400.009-315. SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS. — (a) Except as otherwise provided in this article and in section 400.2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized in writing the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by section 400.9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under section 400.9-515 or is terminated under section 400.9-513; or

(2) The twenty-first day after the security interest attaches to the proceeds.

400.009-316. CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING CHANGE IN GOVERNING LAW. — (a) A security interest perfected pursuant to the law of the jurisdiction designated in section 400.9-301(1) or 400.9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 400.9-311(b) or 400.9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

400.009-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN. — (a) An unperfected security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 400.9-322; and

(2) A person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 400.9-320 and 400.9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

400.009-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD — RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS. — (a) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

400.009-319. RIGHTS AND TITLE OF CONSIGNEE WITH RESPECT TO CREDITORS AND PURCHASERS. — (a) Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

400.009-320. BUYER OF GOODS. — (a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family, or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 400.9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 400.9-313.

400.009-321. LICENSEE OF GENERAL INTANGIBLE AND LESSEE OF GOODS IN ORDINARY COURSE OF BUSINESS. — (a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the

person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

400.009-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL. — (a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes of subsection (a)(1):

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under section 400.9-327, 400.9-328, 400.9-329, 400.9-330 or 400.9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subsections (a) through (e) are subject to:

(1) Subsection (g) and the other provisions of this part;

(2) Section 400.4-210 with respect to a security interest of a collecting bank;

(3) Section 400.5-118 with respect to a security interest of an issuer or nominated person; and

(4) Section 400.9-110 with respect to a security interest arising under article 2 or 2A.

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

400.009-323. FUTURE ADVANCES. — (a) Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under section 400.9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under section 400.9-309 when it attaches; or

(B) Temporarily under section 400.9-312(e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 400.9-309 or 400.9-312(e), (f), or (g).

(b) Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor while the security interest is perfected only to the extent that it secures advances made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five days after the purchase.

(e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five days after the lease contract becomes enforceable.

(g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

400.009-324. PRIORITY OF PURCHASE — MONEY SECURITY INTERESTS. — (a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 400.9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase- money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 400.9-330, and, except as otherwise provided

in section 400.9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 400.9-312(f), before the beginning of the twenty-day period thereunder.

(d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 400.9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 400.9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 400.9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase- money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, section 400.9-322(a) applies to the qualifying security interests.

400.009-325. PRIORITY IN SECURITY INTERESTS IN TRANSFERRED COLLATERAL. — (a) Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Subsection (a) subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under section 400.9-322(a) or 400.9-324; or

(2) Arose solely under section 400.2-711(3) or 400.2A-508(5).

400.009-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR. — (a) Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 400.9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 400.9-508.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 400.9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

400.009-327. PRIORITY OF SECURED INTERESTS IN DEPOSIT ACCOUNT. — The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under section 400.9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under section 400.9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under section 400.9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

400.009-328. PRIORITY IN SECURITY INTERESTS IN INVESTMENT PROPERTY. — The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under section 400.9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under section 400.9-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under section 400.8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under section 400.8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under section 400.8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 400.9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under section 400.9-313(a) and not by control under section 400.9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under section 400.9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by sections 400.9-322 and 400.9-323.

400.009-329. PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHT. — The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under section 400.9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under section 400.9-314 rank according to priority in time of obtaining control.

400.009-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT. — (a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 400.9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 400.9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in section 400.9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 400.9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in section 400.9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

400.009-331. PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, AND SECURITIES UNDER OTHER ARTICLES — PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER ARTICLE 8. — (a) This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles 3, 7, and 8.

(b) This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under article 8.

(c) Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

400.009-332. TRANSFER OF MONEY — TRANSFER OF FUNDS FROM DEPOSIT ACCOUNT. — (a) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

400.009-333. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW. — (a) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

400.009-334. PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS. — (a) A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) The security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) Perfected pursuant to a statute described in section 400.9-311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under subsection (f) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails over any inconsistent provisions of other statutes.

400.009-335. ACCESSIONS. — (a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 400.9-311(b).

(e) After default, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

400.009-336. COMMINGLED GOODS. — (a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to value of the collateral at the time it became commingled goods.

400.009-337. PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY CERTIFICATE OF TITLE. — If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 400.9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

400.009-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. — If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 400.9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

400.009-339. PRIORITY SUBJECT TO SUBORDINATION. — This article does not preclude subordination by agreement by a person entitled to priority.

400.009-340. EFFECTIVENESS OF RIGHT OF RECOUPMENT OR SET-OFF AGAINST DEPOSIT ACCOUNT. — (a) Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in subsection (c), the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 400.9-104(a)(3), if the set-off is based on a claim against the debtor.

400.009-341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO DEPOSIT ACCOUNT. — Except as otherwise provided in section 400.9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

400.009-342. BANK'S RIGHTS TO REFUSE TO ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT. — This article does not require a bank to enter into an agreement of the kind described in section 400.9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

PART 4
RIGHTS OF THIRD PARTIES

400.009-401. ALIENABILITY OF DEBTOR'S RIGHTS. — (a) Except as otherwise provided in subsection (b) and sections 400.9-406, 400.9-407, 400.9-408 and 400.9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(b) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

400.009-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR OR IN TORT. — The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

400.009-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE. — (a) In this section, "value" has the meaning provided in section 400.3-303(a).

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 400.3-305(a).

(c) Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 400.3-305(b).

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in subsection (d), this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

400.009-404. RIGHTS ACQUIRED BY ASSIGNEE — CLAIMS AND DEFENSES AGAINST ASSIGNEE. — (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-care-insurance receivable.

400.009-405. MODIFICATION OF ASSIGNED CONTRACT. — (a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Subsection (a) applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 400.9-406(a).

(c) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) This section does not apply to an assignment of a health-care-insurance receivable.

400.009-406. DISCHARGE OF ACCOUNT DEBTOR — NOTIFICATION OF ASSIGNMENT — IDENTIFICATION AND PROOF OF ASSIGNMENT — RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE. — (a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or general intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and sections 400.2A-303 and 400.9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in sections 400.2A-303 and 400.9-407, and subject to subsections (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) Provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent provisions of any statutes, rules, and regulations.

400.009-407. RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST. — (a) Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in section 400.2A-303(7), a term described in subsection (a)(2) is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 400.2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective.

400.009-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH CARE INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE. — (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care- insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any

related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care- insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section prevails over any inconsistent provisions of any statutes, rules, and regulations.

400.009-409. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-CREDIT RIGHTS INEFFECTIVE. — (a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

PART 5
FILING

400.009-501. FILING OFFICE. — (a) Except as otherwise provided in subsection (b), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the secretary of state in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

400.009-502. CONTENTS OF FINANCING STATEMENT — RECORD OF MORTGAGE AS FINANCING STATEMENT — TIME OF FILING FINANCIAL STATEMENT. — (a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in section 400.9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed for record in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

400.009-503. NAME OF DEBTOR AND SECURED PARTY. — (a) A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:

(A) If the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(4)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

400.009-504. INDICATION OF COLLATERAL. — A financing statement sufficiently indicates the collateral that it covers only if the financing statement provides:

(1) A description of the collateral pursuant to section 400.9-108; or

(2) An indication that the financing statement covers all assets or all personal property.

400.009-505. FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS, AND OTHER TRANSACTIONS. — (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 400.9-311(a), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

(b) This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under section 400.9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

400.009-506. EFFECT OF ERRORS OR OMISSIONS. — (a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 400.9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 400.9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of section 400.9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

400.009-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT. — (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and section 400.9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the

information provided in the financing statement becomes seriously misleading under section 400.9-506.

(c) If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 400.9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

400.009-508. EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT. — (a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under section 400.9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 400.9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 400.9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 400.9-507(a).

400.009-509. PERSONS ENTITLED TO FILE A RECORD. — (a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under section 400.9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 400.9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(d) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (c).

400.009-510. EFFECTIVENESS OF FILED RECORD. — (a) A filed record is effective only to the extent that it was filed by a person that may file it under section 400.9-509.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by section 400.9-515(d) is ineffective.

400.009-511. SECURED PARTY OF RECORD. — (a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 400.9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 400.9-514(b), the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

400.009-512. AMENDMENT OF FINANCING STATEMENT. — (a) Subject to section 400.9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in section 400.9-501(a)(1), provides the information specified in section 400.9-502(b).

(b) Except as otherwise provided in section 400.9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

400.009-513. TERMINATION STATEMENT. — (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subsection (a), within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in section 400.9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 400.9-510, for purposes of sections 400.9- 519(g), 400.9-522(a), and 400.9-523(c), upon the filing of a termination statement with the filing office, a financing statement indicating that the debtor is a transmitting utility to which the termination statement relates ceases to be effective.

400.009-514. ASSIGNMENT OF POWERS OF SECURED PARTY OF RECORD. — (a) Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 400.9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than chapter 400.

400.009-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT — EFFECT OF LAPSED FINANCING STATEMENT. — (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or

agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in section 400.9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 400.9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

400.009-516. WHAT CONSTITUTES FILING — EFFECTIVENESS OF FILING. — (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or correction statement, the record:

(i) Does not identify the initial financing statement as required by section 400.9-512 or 400.9-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under section 400.9-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) In the case of a record filed or recorded in the filing office described in section 400.9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under section 400.9-514(a) or an amendment filed under section 400.9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 400.9-515(d).

(c) For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 400.9-512, 400.9-514 or 400.9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

400.009-517. EFFECT OF INDEXING ERRORS. — The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

400.009-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD. — (a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

400.009-519. NUMBERING, MAINTAINING, AND INDEXING RECORDS — COMMUNICATING INFORMATION PROVIDED IN RECORDS. — (a) For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e).

(b) A file number assigned after January 1, 2003, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in subsections (d) and (e), the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 400.9-514(a) or an amendment filed under section 400.9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 400.9-515 with respect to all secured parties of record.

(h) The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but after January 1, 2003, not later than three business days after the filing office receives the record in question.

400.009-520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD. — (a) A filing office shall refuse to accept a record for filing for a reason set forth in section 400.9-516(b) and may refuse to accept a record for filing only for a reason set forth in section 400.9-516(b).

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule in no event more than three business days after the filing office receives the record.

(c) A filed financing statement satisfying section 400.9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, section 400.9-338 applies to a filed financing statement providing information described in section 400.9- 516(b)(5) which is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

400.009-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT. — Except for a reason set forth in section 400.9- 516(b), a filing office that accepts written records may not refuse to accept a written document for a filing authorized by this chapter, provided that the document conforms to a format:

(1) Approved by the International Association of Corporate Administrators; or

(2) Adopted by a rule promulgated by the secretary of state pursuant to section 400.9-526.

400.9-522. MAINTENANCE AND DESTRUCTION OF RECORDS. — (a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 400.9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

400.009-523. INFORMATION FROM FILING OFFICE — SALE OR LICENSE OF RECORDS. — (a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 400.9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to section 400.9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to section 400.9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) Has not lapsed under section 400.9-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under section 400.9-515 and a record of which is maintained by the filing office under section 400.9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(e) The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but after January 1, 2003, not later than three business days after the filing office receives the request.

(f) At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

400.009-524. DELAY BY FILING OFFICE. — Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

400.009-525. FEES. — (a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in section 400.9-502(c), is the amount specified in subsection (c), if applicable, plus:

(1) If the filing office is the secretary of state's office, then twelve dollars for the first page and one dollar for each subsequent page if the record is communicated in writing or by another medium authorized by filing office rule, of which fee seven dollars is received and collected by the secretary of state on behalf of the county employees' retirement fund established pursuant to section 50.1010, RSMo., provided, however, that in any charter county or city not within a county whose employees are not members of the county employees' retirement fund, the fee collected for the county employees retirement fund established pursuant to section 50.1010, RSMo, shall go to the general revenue fund of that charter county or city not within a county; or

(2) If the filing office is other than the secretary of state's office, then the fee otherwise allowed by law.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the kind described in section 400.9-502(c) is the amount specified in subsection (c), if applicable, plus:

(1) If the filing office is the secretary of state's office, then twelve dollars for the first page and one dollar for each subsequent page if the record is communicated in writing or by another medium authorized by filing office rule, of which fee seven dollars is received and collected by the secretary of state on behalf of the county employees retirement fund established pursuant to section 50.1010, RSMo., provided, however, that in any charter county or city not within a county whose employees are not members of the county employees' retirement fund, the fee collected for the county employees' retirement fund established pursuant to section 50.1010, RSMo, shall go to the general revenue fund of that charter county or city not within a county; or

(2) If the filing office is other than the secretary of state's office, then the fee otherwise allowed by law.

(c) The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b).

(d) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) If the filing office is the secretary of state's office, then twenty-two dollars for the first page and one dollar for each subsequent page if the record is communicated in writing or by another medium authorized by filing office rule, of which fee seven dollars is received and collected by the secretary of state on behalf of the county employees' retirement fund established pursuant to section 50.1010, RSMo., provided, however, that in any charter county or city not within a county whose employees are not members of the county employees' retirement fund, the fee collected for the county employees retirement fund established pursuant to section 50.1010, RSMo, shall go to the general revenue fund of that charter county or city not within a county; or

(2) If the filing office is other than the secretary of state's office, then the fee otherwise allowed by law.

(e) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 400.9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) The secretary of state shall administer a special trust fund, which is hereby established, to be known as the "Uniform Commercial Code Transition Fee Trust Fund", and which shall be funded by seven dollars of each of the fees received and collected pursuant to subdivisions (a), (b) and (c) of this section on behalf of the county employees retirement fund established pursuant to section 50.1010, RSMo. or the general revenue fund of any charter county or city not within a county whose employees are not members of the county employees' retirement fund.

(1) The secretary of state shall keep accurate record of the moneys in the uniform commercial code transition fee trust fund allocated to each county and city not within a county on the basis of where such record, financing statement or other document would have been filed prior to the effective date of this act, and shall distribute the moneys pursuant to subdivision (2) of this subsection on that basis.

(2) The moneys in the uniform commercial code transition fee trust fund shall be distributed to the county employees retirement fund established pursuant to section 50.1010, RSMo. or the general revenue fund of any charter county or city not within a county whose employees are not members of the county employees' retirement fund

(3) The moneys in the uniform commercial code transition fee trust fund shall not be deemed to be state funds, provided, however that interest, if any, earned by the money in the trust fund shall be deposited into the general revenue fund in the state treasury.

400.009-526. FILING OFFICE RULES. — (a) The secretary of state shall have the authority to promulgate all rules necessary to the administration and enforcement of the provisions of this chapter. All rules shall be promulgated pursuant to the provisions of this section and chapter 536, RSMo. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the secretary of state, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing-office rules, shall:

(1) Consult with filing offices in other jurisdictions that enact substantially this part;

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

400.009-527. DUTY TO REPORT. — The secretary of state shall report annually on or before February 1 to the governor, the president pro tempore of the senate and the speaker of the house of representatives on the operation of the filing office. The report must contain a statement of the extent to which:

(1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) The filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

PART 6
DEFAULT

400.009-601. RIGHTS AFTER DEFAULT — JUDICIAL ENFORCEMENT — CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. — (a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 400.9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under section 400.9-104, 400.9-105, 400.9-106 or 400.9-107 has the rights and duties provided in section 400.9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and section 400.9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral; or

(2) The date of filing a financing statement covering the collateral;

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Except as otherwise provided in section 400.9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

400.009-602. WAIVER OF VARIANCE OF RIGHTS AND DUTIES. — Except as otherwise provided in section 400.9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, a secured party may not require the debtor or obligor to waive or vary the rules stated in the following listed sections:

(1) Section 400.9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 400.9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 400.9-607(c), which deals with collection and enforcement of collateral;

(4) Sections 400.9-608(a) and 400.9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 400.9-608(a) and 400.9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 400.9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 400.9-610(b), 400.9-611, 400.9-613 and 400.9-614, which deal with disposition of collateral;

(8) Section 400.9-616, which deals with explanation of the calculation of a surplus or deficiency;

(9) Sections 400.9-620, 400.9-621 and 400.9-622, which deal with acceptance of collateral in satisfaction of obligation;

(10) Section 400.9-623, which deals with redemption of collateral;

(11) Section 400.9-624, which deals with permissible waivers; and

(12) Sections 400.9-625 and 400.9-626, which deal with the secured party's liability for failure to comply with this article.

400.009-603. AGREEMENT ON STANDARDS CONCERNING RIGHTS AND DUTIES. — (a) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 400.9-602 if the standards are not manifestly unreasonable.

(b) Subsection (a) does not apply to the duty under section 400.9-609 to refrain from breaching the peace.

400.009-604. PROCEDURE IF SECURITY AGREEMENT COVERS REAL PROPERTY OR FIXTURES. — (a) If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

400.009-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR. — A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

400.009-606. TIME OF DEFAULT FOR AGRICULTURAL LIEN. — For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party

becomes entitled to enforce the lien in accordance with the statute under which it was created.

400.009-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY. — (a) If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under section 400.9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under section 400.9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under section 400.9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

400.009-608. APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT — LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. — (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under this section in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which

the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed;

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C);

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner;

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

400.009-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT. — (a) After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 400.9-610.

(b) A secured party may proceed under subsection (a):

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

400.009-610. DISPOSITION OF COLLATERAL AFTER DEFAULT. — (a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d):

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

400.009-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. — (a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under section 400.9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 400.9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party named in that response whose financing statement covered the collateral.

400.009-612. TIMELINESS OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. — (a) Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

400.009-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL. — Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public sale or the time after which any other disposition is to be made;

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact;

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading;

(4) A particular phrasing of the notification is not required;

(5) The following form of notification and the form appearing in section 400.9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: ***(Name of debtor, obligor, or other person to which the notification is sent)***

From: ***(Name, address, and telephone number of secured party)***

Name of Debtor(s): ***(Include only if debtor(s) are not an addressee)***

(For a public disposition:)

We will sell (or lease or license, ***as applicable*****) the (***describe collateral***) (to the highest qualified bidder) in public as follows:**

Day and Date: _____

Time: _____

Place: _____

(*For a private disposition:***)**

We will sell (or lease or license, ***as applicable*****) the (***describe collateral***) privately sometime after (***day and date***).**

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, ***as applicable*****) (for a charge of $). You may request an accounting by calling us at (***telephone number***)**

(End of Form)

400.009-614. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: CONSUMER GOODS TRANSACTION. — In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in section 400.9-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 400.9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available;

(2) A particular phrasing of the notification is not required;

(3) The following form of notification, when completed, provides sufficient information:

(*Name and address of secured party***)**

(*Date***)**

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (*Identification of Transaction***)**

We have your (*describe collateral***) , because you broke promises in our agreement.**

(For a public disposition:)

We will sell *(describe collateral)* at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____
Time: _____
Place: _____

You may attend the sale and bring bidders if you want.

(*For a private disposition:*)

We will sell (*describe collateral*) at private sale sometime after (*date*) . A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you (*will or will not, as applicable*) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at (*telephone number*).

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (*telephone number*) (or write us at (*secured party's address*)) and request a written explanation. (We will charge you $ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.)

If you need more information about the sale call us at (*telephone number*) (or write us at (*secured party's address*)). We are sending this notice to the following other people who have an interest in (*describe collateral*) or who owe money under your agreement:

(Names of all other debtors and obligors, if any)

(End of Form)

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form;

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article;

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

400.009-615. APPLICATION OF PROCEEDS OF DISPOSITION — LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. — **(a) A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to:**

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without notice that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

400.009-616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY. — (a) In this section:

(1) "Explanation" means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under section 400.9-610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 400.9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subsection (a)(1)(B), a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

400.009-617. RIGHTS OF TRANSFEREE OF COLLATERAL. — (a) A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.

400.009-618. RIGHTS AND DUTIES OF CERTAIN SECONDARY OBLIGORS. — (a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer, or subrogation described in subsection (a):

(1) Is not a disposition of collateral under section 400.9-610; and

(2) Relieves the secured party of further duties under this article.

400.009-619. TRANSFER OF RECORD OR LEGAL TITLE. — (a) In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

400.009-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF OBLIGATION — COMPULSORY DISPOSITION OF COLLATERAL. — (a) Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c);

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under section 400.9-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 400.9-624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) are met.

(c) For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

(d) To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to section 400.9-621, within twenty days after notification was sent to that person; and

(2) In other cases:

(A) Within twenty days after the last notification was sent pursuant to section 400.9-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 400.9-610 within the time specified in subsection (f) if:

(1) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase- money security interest in consumer goods.

(f) To comply with subsection (e), the secured party shall dispose of the collateral:

(1) Within ninety days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

400.009-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL. — (a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 400.9-311(a).

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

400.009-622. EFFECT OF ACCEPTANCE OF COLLATERAL. — (a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this article.

400.009-623. RIGHT TO REDEEM COLLATERAL. — (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in section 400.9-615(a)(1).

(c) A redemption may occur at any time before a secured party:

(1) Has collected collateral under section 400.9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under section 400.9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 400.9-622.

400.009-624. WAIVER. — (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 400.9-611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under section 400.9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 400.9-623 only by an agreement to that effect entered into and authenticated after default.

400.009-625. REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY WITH ARTICLE. — (a) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply with a request under section 400.9-210 may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in section 400.9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that

failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) A debtor whose deficiency is eliminated under section 400.9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 400.9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

(1) Fails to comply with section 400.9-208;

(2) Fails to comply with section 400.9-209;

(3) Files a record that the person is not entitled to file under section 400.9-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by section 400.9-513(a) or (c);

(5) Fails to comply with section 400.9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with section 400.9-616(b)(2).

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, five hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under section 400.9-210. A recipient of a request under section 400.9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 400.9-210, the secured party may claim a security interest only as shown in the statement included in the request as against a person that is reasonably misled by the failure.

(h) This section shall apply on and after January 1, 2003.

400.9-626. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN ISSUE. — (a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in section 400.9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition, or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under section 400.9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

(c) This section shall apply on and after January 1, 2003.

400.009-627. DETERMINATION OF WHETHER CONDUCT WAS COMMERCIALLY REASONABLE. — (a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

400.009-628. NONLIABILITY AND LIMITATION ON LIABILITY OF SECURED PARTY — LIABILITY OF SECONDARY OBLIGOR. — (a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable under section 400.9-625(c)(2) more than once with respect to any one secured obligation.

400.009-629. DISPOSITION ORDERED FOR NONCOMPLIANCE OF SECURED PARTY — TERMINATION DATE. — (1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

(3) The provisions of this section shall terminate on December 31, 2002.

PART 7
TRANSITION

400.009-701. DEFINITION OF THIS ACT. — For the purposes of this section and sections 400.9-702 to 400.9-708, "this act" shall refer to sections 400.9-101 to 400.9-628.

400.009-702. SAVINGS CLAUSE. — (a) Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the effective date of this act.

(b) Except as otherwise provided in subsection (c) and sections 400.9-703 through 400.9-708:

(1) Transactions and liens that were not governed by former article 9, were validly entered into or created before this act takes effect, and would be subject to this act if they had been entered into or created after this act takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this act takes effect; and

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) This act does not affect an action, case, or proceeding commenced before this act takes effect.

400.009-703. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. — (a) A security interest that is enforceable immediately before this act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, when this act takes effect, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

(b) Except as otherwise provided in section 400.9-705, if, immediately before this act takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this act are not satisfied when this act takes effect, the security interest:

(1) Is a perfected security interest for one year after this act takes effect;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under section 400.9-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this act are satisfied before the year expires.

400.009-704. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. — A security interest that is enforceable immediately before this act takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after this act takes effect;

(2) Remains enforceable thereafter if the security interest becomes enforceable under section 400.9-203 when this act takes effect or within one year thereafter; and

(3) Becomes perfected:

(A) Without further action, when this act takes effect if the applicable requirements for perfection under this act are satisfied before or at that time; or

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

400.009-705. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE. — (a) If action, other than the filing of a financing statement, is taken before this act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this act takes effect, the action is effective to perfect a security interest that attaches under this act within one year after this act takes effect. An attached security interest becomes unperfected one year after this act takes effect unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 400.9-103. However, except as otherwise provided in subsections (d) and (e) and section 400.9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) Subsection (c)(2) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 400.9-103 only to the extent that Part 3 provides that the law of a jurisdiction other than jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.

400.009-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT. — (a) The filing of an initial financing statement in the office specified in section 400.9-501 continues the effectiveness of a financing statement filed before this act takes effect if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) The pre-effective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective- date financing statement:

(1) If the initial financing statement is filed before this act takes effect, for the period provided in former section 400.9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after this act takes effect, for the period provided in section 400.9-515 with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of Part 5 for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

400.009-707. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT. — (a) In this section, "pre-effective-date financing statement" means a financing statement filed before this act takes effect.

(b) After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this act takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in section 400.9- 501;

(2) An amendment is filed in the office specified in section 400.9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 400.9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies section 400.9-706(c) is filed in the office specified in section 400.9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under section 400.9-705(d) and (f) or section 400.9-706.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after this act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies section 400.9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

400.009-708. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. — A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before this act takes effect; or

(B) To perfect or continue the perfection of a security interest.

400.009-709. PRIORITY. — (a) This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act takes effect, former article 9 determines priority.

(b) For purposes of section 400.9-322(a), the priority of a security interest that becomes enforceable under section 400.9-203 of this act dates from the time this act takes effect if the security interest is perfected under this act by the filing of a financing statement before this act takes effect which would not have been effective to perfect the security interest under former article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

400.009-710. LOCAL FILING OFFICE TO MAINTAIN FORMER ARTICLE 9 RECORDS. — (a) In this section:

(1) "Former article 9 records" means:

a. Financing statements and other records that have been filed in the local-filing office before the effective date of this act, and that are, or upon processing and indexing will be, reflected in the index maintained, as of the effective date of this act, by the local-filing office for financing statements and other records filed in the local-filing office before the effective date of this act; and

b. The index as of the effective date of this act. The term does not include records presented to a local-filing office for filing after the effective date of this act, whether or not the records relate to financing statements filed in the local-filing office before the effective date of this act.

(2) "Local-filing office" means a filing office, other than the office of the secretary of state, that is designated as the proper place to file a financing statement under 400.9-401 of former article 9. The term applies only with respect to a record that covers a type of

collateral as to which the filing office is designated in that section as the proper place to file.

(b) Until June 30, 2006, each local-filing office must maintain all former article 9 records in accordance with former article 9. A former article 9 record that is not reflected on the index maintained on the effective date of this act, by the local-filing office must be processed and indexed, and reflected on the index as of the effective date of this act, as soon as practicable but in any event no later than thirty days after the effective date of this act.

(c) Until at least June 30, 2008, each local-filing office must respond to requests for information with respect to former article 9 records relating to a debtor and issue certificates, in accordance with former article 9. The fees charged for responding to requests for information relating to a debtor and issuing certificates with respect to former article 9 records must be the fees in effect under former article 9 on the effective date of this act.

(d) After June 30, 2006, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this state, all former article 9 records, including the related index.

(e) This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

(1) The collateral is timber to be cut or as-extracted collateral; or

(2) The record is or relates to a financing statement filed as a fixture and the collateral is goods that are or are to become fixtures.

417.018. ADDITIONAL FEE — EXPIRATION DATE. — The secretary of state may collect an additional fee of five dollars on each and every fee required in this chapter. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account. **The provisions of this section shall expire on December 31, 2009.**

431.202. EMPLOYMENT COVENANTS ENFORCEABLE, WHEN — REASONABILITY PRESUMPTION. — 1. A reasonable covenant in writing promising not to solicit, recruit, hire or otherwise interfere with the employment of one or more employees shall be enforceable and not a restraint of trade pursuant to subsection 1 of section 416.031, RSMo, if:

(1) Between two or more corporations or other business entities seeking to preserve workforce stability (which shall be deemed to be among the protectable interests of each corporation or business entity) during, and for a reasonable period following, negotiations between such corporations or entities for the acquisition of all or a part of one or more of such corporations or entities;

(2) Between two or more corporations or business entities engaged in a joint venture or other legally permissible business arrangement where such covenant seeks to protect against possible misuse of confidential or trade secret business information shared or to be shared between or among such corporations or entities;

(3) Between an employer and one or more employees seeking on the part of the employer to protect:

(a) Confidential or trade secret business information; or

(b) Customer or supplier relationships, goodwill or loyalty, which shall be deemed to be among the protectable interests of the employer; or

(4) Between an employer and one or more employees, notwithstanding the absence of the protectable interests described in subdivision (3) of this subsection, so long as such covenant does not continue for more than one year following the employee's employment; provided, however, that this subdivision shall not apply to covenants signed by employees who provide only secretarial or clerical services.

2. Whether a covenant covered by this section is reasonable shall be determined based upon the facts and circumstances pertaining to such covenant, but a covenant covered exclusively by subdivision (3) or (4) of subsection 1 of this section shall be conclusively presumed to be reasonable if its post-employment duration is no more than one year.

3. Nothing in this subdivision (3) or (4) of subsection 1 of this section is intended to create, or to affect the validity or enforceability of, employer-employee covenants not to compete.

4. Nothing in this section shall preclude a covenant described in subsection 1 of this section from being enforceable in circumstances other than those described in subdivisions (1) to (4) of subsection 1 of this section, where such covenant is reasonably necessary to protect a party's legally permissible business interests.

5. Nothing is this section shall be construed to limit an employee's ability to seek or accept employment with another employer immediately upon, or at any time subsequent to, termination of employment, whether said termination was voluntary or non-voluntary.

6. This section shall have retrospective as well as prospective effect.

SECTION 1. ELECTRONIC FACSIMILE FILINGS FOR DOCUMENTS FILED WITH SECRETARY OF STATE'S OFFICE, RULEMAKING AUTHORITY. — The Secretary of State may adopt rules to authorize the electronic facsimile filing of any document filed with the Secretary under any provision administered by the Secretary. The rules may set forth standards for the acceptance of a form of signature other than the proper handwriting of a person. A signature or document filed by electronic facsimile in accordance with rules promulgated pursuant to this section shall be prima facie evidence for all purposes that the document actually was signed by the person whose signature appears on the facsimile.

[59.040. COMBINATION OR SEPARATION OF OFFICE — ELECTION — FORM OF BALLOT (THIRD CLASS COUNTIES). — 1. In a county of the third class, the question of combining the offices of circuit clerk and recorder or separating the offices may be submitted to the voters of the county by the county commission and shall be submitted by the county commission upon the petition of voters who comprise at least eight percent of the voters of the county as determined by the total vote for governor at the last preceding general election at which a governor was elected.

2. If the two offices are separate and the question is to combine the two offices, the question shall be submitted in substantially the following form:

Shall the offices of the circuit clerk and recorder in ..... (name of county) county be combined?

3. If the two offices are combined and the question is to separate the two offices, the question shall be submitted in substantially the following form:

Official Ballot

Shall the offices of circuit clerk and recorder in .....(name of county) county be separated?

4. The submission of the question provided for in this section may be made at the November election in 1948, or any fourth year thereafter. Any consolidation or separation brought about as a result of the provisions of this section shall not become effective until the expiration of the term of office of the officers affected.**]**

[59.050. SEPARATION OF OFFICES OF CIRCUIT CLERK AND COUNTY RECORDER, WHEN — ELECTIONS PRIOR TO BECOMING SECOND CLASS COUNTY. — In any county of the third class where the offices of the clerk of the circuit court and the recorder of deeds are combined and which will become a county of the second class on the first day of January next following the general election at which the circuit clerk ex officio recorder of deeds would normally be elected, the combined office shall not be filled at that general election, but candidates may file

and stand for election for the separate offices of clerk of the circuit court and recorder of deeds and the winner of the election for each office shall assume his separate duties on the first day of January next following the election for the full four-year term of office.**]**

[347.189. REQUIRES FILING PROPERTY CONTROL AFFIDAVIT IN CERTAIN CITIES, INCLUDING KANSAS CITY. — Any limited liability company that owns and rents or leases real property located within any home rule city with a population of more than four hundred thousand inhabitants which is located in more than one county, shall file with that city's clerk an affidavit listing the name and address of at least one person, who has management control and responsibility for the real property owned and leased or rented by the limited liability company.**]**

[351.440. MERGER OR CONSOLIDATION SHALL BE EFFECTED, WHEN. — Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.**]**

[400.009-101. SHORT TITLE. — This article shall be known and may be cited as "Uniform Commercial Code — Secured Transactions".**]**

[400.009-102. DEFINITIONS AND INDEX OF DEFINITIONS. — (1) Except as otherwise provided in section 400.9-104 on excluded transactions, this article applies

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel papers, or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 400.9-310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.**]**

[400.009-103. PURCHASE-MONEY SECURITY INTEREST — APPLICATION OF PAYMENTS — BURDEN OF ESTABLISHING. — (1) Documents, instruments, letters of credit, and ordinary goods.

(a) This subsection applies to documents and instruments, rights to proceeds of written letters of credit, and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security

interest remains perfected, but if action is required by Part 3 of this article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of section 400.9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by

notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead or governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Investment property.

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in section 400.8-110(d).

(d) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in section 400.8-110(e).

(e) Except as otherwise provided in paragraph (f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii), the commodity intermediary's

jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.**]**

[400.009-104. CONTROL OF DEPOSIT ACCOUNT. — This article does not apply

(a) to a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in section 400.9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to a transfer by a government or governmental subdivision or agency; or

(f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (section 400.9-306) and priorities and proceeds (section 400.9-312); or

(h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) to any right of setoff; or

(j) except to the extent that provision is made for fixtures in section 400.9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any claim arising out of tort; or

(l) to a transfer of an interest in any deposit account (subsection (1) of section 400.9-105), except as provided with respect to proceeds (section 400.9-306) and priorities and proceeds (section 400.9-312); or

(m) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit.**]**

[400.009-105. CONTROL OF ELECTRONIC CHATTEL PAPER. — (1) In this Article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of article 1 (section 400.1-201), and a receipt of the kind described in subsection (2) of section 400.7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 400.9-313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in section 400.3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment. The term does not include investment property;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a deed of trust on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolly bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service;

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account". Section 400.9-106.

"Attach". Section 400.9-203.

"Commodity contract". Section 400.9-115.

"Commodity customer". Section 400.9-115.

"Commodity intermediary". Section 400.9-115.

"Construction mortgage". Section 400.9-313(1).

"Consumer goods". Section 400.9-109(1).

"Control". Section 400.9-115.

"Equipment". Section 400.9-109(2).

"Farm products". Section 400.9-109(3).

"Fixture". Section 400.9-313.

"Fixture filing". Section 400.9-313.
"General intangibles". Section 400.9-106.
"Inventory". Section 400.9-109(4).
"Investment property". Section 400.9-115.
"Letter of credit". Section 400.5-102.
"Lien creditor". Section 400.9-301(3).
"Proceeds". Section 400.9-306(1).
"Purchase money security interest". Section 400.9-107.
"Rights to proceeds of a written letter of credit". Section 400.5- 114(a).
"United States". Section 400.9-103.
(3) The following definitions in other articles apply to this article:
"Broker". Section 400.8-102.
"Certificated security". Section 400.8-102.
"Check". Section 400.3-104.
"Clearing corporation". Section 400.8-102.
"Contract for sale". Section 400.2-106.
"Control". Section 400.8-106.
"Delivery". Section 400.8-301.
"Entitlement holder". Section 400.8-102.
"Financial asset". Section 400.8-102.
"Holder in due course". Section 400.3-302.
"Note". Section 400.3-104.
"Sale". Section 400.2-106.
"Securities intermediary". Section 400.8-102.
"Security". Section 400.8-102.
"Security certificate". Section 400.8-102.
"Security entitlement". Section 400.8-102.
"Uncertificated security". Section 400.8-102.
(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.**]**

[400.009-106. CONTROL OF INVESTMENT PROPERTY. — "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, investment property, instruments, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.**]**

[400.009-107. CONTROL OF LETTER-OF-CREDIT-RIGHT. — A security interest is a "purchase money security interest" to the extent that it is
(a) taken or retained by the seller of the collateral to secure all or part of its price; or
(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.**]**

[400.009-108. SUFFICIENCY OF DESCRIPTION. — Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course

of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.**]**

[400.009-109. SCOPE.— Goods are

(1) "Consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "Equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "Farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, woolclip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "Inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.**]**

[400.009-110. SECURITY INTERESTS ARISING UNDER ARTICLE 2 OR 2A. — For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.**]**

[400.009-111. APPLICABILITY OF BULK TRANSFER LAWS. — The creation of a security interest is not a bulk transfer under article 6 (see section 400.6-103).**]**

[400.009-112. WHERE COLLATERAL IS NOT OWNED BY DEBTOR. — Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 400.9-502(2) or under section 400.9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

(a) to receive statements under section 400.9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 400.9-505;

(c) to redeem the collateral under section 400.9-506;

(d) to obtain injunctive or other relief under section 400.9-507(1); and

(e) to recover losses caused to him under section 400.9-208(2).**]**

[400.009-113. SECURITY INTERESTS ARISING UNDER ARTICLE ON SALES OR UNDER ARTICLE ON LEASES. — A security interest arising solely under the Article on Sales (Article 2) or the Article on Leases (Article 2A) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed (i) by the Article on Sales (Article 2) in the case of a security interest arising solely under such Article or (ii) by the Article on Leases (Article 2A) in the case of a security interest arising solely under such Article.**]**

[400.009-114. CONSIGNMENT, PRIORITY OVER OTHER PARTIES, WHEN — NOTICE TO LIENHOLDER OF SALE. — (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this article by paragraph (3)(c) of section 400.2-326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

(a) the consignor complies with the filing provision of the article on sales with respect to consignments (paragraph (3)(c) of section 400.2-326) before the consignee receives possession of the goods; and

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(c) the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

(3) A person who consigns consumer goods, except for motor vehicles, trailers, manufactured or mobile homes not for highway use, and any type of watercraft, as defined in chapter 306, RSMo, to a consignee to sell shall have the sole obligation to notify the lienholder of the goods to be sold, that such goods will be offered for sale on a certain date. At no time shall the consignee be held liable to the lienholder, providing the consignee sells in good faith and is acting only as the agent for the consignor.**]**

[400.009-115. INVESTMENT PROPERTY, DEFINITIONS — PERFECTION. — (1) In this article:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for commodity customers;

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) Traded on a foreign commodity board of trade, exchange or market, and is carried on the books of a commodity intermediary for a commodity customer;

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books;

(d) "Commodity intermediary" means:

(i) A person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws;

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in section 400.8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest

in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account;

(f) "Investment property" means:

(i) A security, whether certificated or uncertificated;

(ii) A security entitlement;

(iii) A securities account;

(iv) A commodity contract; or

(v) A commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control;

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing;

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest;

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property;

(b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interest of secured parties each of whom has control rank equally;

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party;

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party;

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally;

(f) In all other cases, priority between conflicting security interest in investment property is governed by section 400.9-312(5), (6), and (7). Section 400.9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.**]**

[400.009-116. SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET. — (1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.**]**

[400.009-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT. — Except as otherwise provided by this chapter a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.**]**

[400.009-202. TITLE TO COLLATERAL IMMATERIAL. — Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.**]**

[400.009-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST — PROCEEDS — SUPPORTING OBLIGATIONS — FORMAL REQUISITES. — (1) Subject to the provisions of section 400.4-208 on the security interest of a collecting bank, sections 400.9-115 and 400.9-116 on security interests in investment property, and section 400.9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 400.9-306.

(4) A transaction, although subject to this article, is also subject to sections 365.010 to 365.160, RSMo, and sections 408.100 to 408.562, RSMo, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.**]**

[400.009-204. AFTER-ACQUIRED PROPERTY — FUTURE ADVANCES. — (1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (section 400.9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (subsection (1) of section 400.9-105).**]**

[400.009-205. USE OR DISPOSITION OF COLLATERAL PERMISSIBLE. — A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.**]**

[400.009-206. SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET. — (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on commercial paper (article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on sales (article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.**]**

[400.009-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL. — (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.**]**

[400.009-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL. — (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding ten dollars for each additional statement furnished.**]**

[400.009-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. — (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under section 400.9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within twenty days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.**]**

[400.009-302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS. — (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under section 400.9-305;

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under section 400.9-304 or in proceeds for a ten-day period under section 400.9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 400.9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (section 400.4-208) or in securities (section 400.8-321) or arising under the article on sales (see section 400.9-113) or covered in subsection (3) of this section;

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(h) a security interest in investment property which is perfected without filing under section 400.9-115 or section 400.9-116.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interests; or

(b) section 301.190, RSMo, or section 306.400, RSMo; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this article (part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of section 400.9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith, except as provided in section 400.9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty or governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article.**]**

[400.009-303. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY CERTIFICATE OF TITLE. — (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 400.9-115, 400.9-302, 400.9-304, 400.9-305 and 400.9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article.**]**

[400.009-304. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS. — (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 400.9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of section 400.9-312; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article.**]**

[400.009-305. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. — A security interest in letters of credit and advices of credit (subsection (2)(a) of section 400.5-116), goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and

continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.**]**

[400.009-306. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS. — (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise provided the creditor agrees in writing, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds;

(c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

(d) the security interest in the proceeds is perfected before the expiration of the ten-day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale, for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 400.9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.**]**

[400.009-307. LOCATION OF DEBTOR. — (1) A buyer in ordinary course of business (subsection (9) of section 400.1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of five hundred dollars (other than fixtures, see section 400.9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.**]**

[400.009-308. WHEN SECURITY INTERESTS OR AGRICULTURE LIEN IS PERFECTED — CONTINUITY OF PERFECTION. — A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

(a) which is perfected under section 400.9-304 (permissive filing and temporary perfection) or under section 400.9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) which is claimed merely as proceeds of inventory subject to a security interest (section 400.9-306) even though he knows that the specific paper or instrument is subject to the security interest.**]**

[400.009-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT. — Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 400.3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 400.7-501) or a protected purchaser of a security (section 400.8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.**]**

[400.009-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN — SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING PROVISIONS DO NOT APPLY. — When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.**]**

[400.009-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES. — The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.**]**

[400.009-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY-PERFECTION BY PERMISSIVE FILING — TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. — (1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: section 400.4-210, with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 400.9-103 on security interests related to other jurisdictions; section 400.9-114 on consignments; section 400.9-115 on security interests in investment property.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of section 400.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under section 400.9-115 or section 400.9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) or section 400.9-115(5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.**]**

[400.009-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. — (1) In this section and in the provisions of part 4 of this article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of section 400.9-402;

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.

(5) A security interest in a manufactured home as defined in section 700.010, RSMo, which has been perfected pursuant to sections 700.350 to 700.390, RSMo, has priority over the conflicting interest of an encumbrancer or owner of the real estate if the security agreement was made before the manufactured home was placed upon the real estate. This subdivision shall apply only to security interests in manufactured homes which are placed on real property after August 28, 1998. This subdivision shall not prevent the use of fixture filings for manufactured homes.

(6) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(7) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4), (5) and (6), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(8) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(9) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate, but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.**]**

[400.009-314. PERFECTION BY CONTROL. — (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to section 400.9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.**]**

[400.009-315. SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS. — (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which paragraph (b)

applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 400.9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.**]**

[400.009-316. CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING CHANGE IN GOVERNING LAW. — Nothing in this article prevents subordination by agreement by any person entitled to priority.**]**

[400.009-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN. — The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.**]**

[400.009-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD — RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS. — (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 400.9-206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due, or requires the account debtor's consent to such assignment or security interest.**]**

[400.009-401. ALIENABILITY OF DEBTOR'S RIGHTS. — (1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the recorder of deeds in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the recorder of deeds in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the recorder of deeds in the county where the land is located;

(b) when the collateral is timber to be cut, minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 400.9-103, or when the financing statement is filed

as a fixture filing (section 400.9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed for record, and any such filing shall be for record;

(c) in all other cases, in the office of the secretary of state and in addition, if the debtor has a place of business in only one county of this state, also in the office of the recorder of deeds of such county, or, if the debtor has no place of business in this state, but resides in the state, also in the office of the recorder of deeds of the county in which he resides.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in section 400.9-103 determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections, and subject to subsection (3) of section 400.9-302, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. This filing constitutes a fixture filing (section 400.9-313) as to the collateral described therein which is or is to become a fixture.

(6) For the purposes of this section, the residence of an organization is its place of business, if it has one, or its chief executive office if it has more than one place of business.**]**

[400.009-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR OR IN TORT. — (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 400.9-103, or when the financing statement is filed as a fixture filing (section 400.9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(b) proceeds under section 400.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor).....

Address .....

Name of secured party (or assignee).....

Address.....

1. This financing statement covers the following types (or items) of property:

(Describe).....

2. (If applicable) The above goods are to become fixtures on

Where appropriate substitute either "The above timber is standing on ....." or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on .....

(Describe Real Estate) ..... and this financing statement is to be filed in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is ....

3. (If products of collateral are claimed) Products of the collateral are also covered.

(use whichever is applicable) ..... Signature of Debtor (or Assignee)

..... Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 400.9-103, or a financing statement filed as a fixture filing (section 400.9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, limited liability company, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes such debtor's name or in the case of an organization its name, identity or organizational structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A financing statement shall not be deemed seriously misleading for purposes of this section by the merger, consolidation, share exchange or conversion of a debtor from one type of entity (e.g. corporation, partnership, limited partnership, limited liability company) into another and a corresponding change in the debtor's name, providing the debtor's name changes only to the extent of adding or changing the designation of the debtor's form of organization, and by way of example and not of limitation, the change from "incorporation" or "inc." to "limited liability company" or "LLC" is not seriously misleading, provided it follows the debtor's name. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.**]**

[400.009-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE. — (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (7) of this section, a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period, unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against a debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the secured party shall give the filing officer written notice of insolvency proceedings, and failing such notice, the filing officer may act as though insolvency proceedings have not been commenced. Without regard to the secured party's compliance with this notice requirement, the security interest remains perfected until the termination of the insolvency proceedings and thereafter for a period of sixty days, or until the financing statement would otherwise have expired, whichever occurs later. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) The uniform fee for filing, indexing and furnishing filing data for a financing statement on officially approved forms shall be six dollars. The uniform fee for filing forms of a size other than officially approved by the secretary of state shall be six dollars, plus one dollar per page for attachments. The uniform fee for filing, indexing and furnishing filing data for an amendment on officially approved forms shall be four dollars. The uniform fee for filing forms of a size other than officially approved by the secretary of state shall be six dollars, plus one dollar per page for attachments.

(4) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 400.9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(5) Except as provided in subsection (8), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement, or a microfilm or other photographic copy thereof, for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(6) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for a continuation statement shall be four dollars if the statement is of the standard size prescribed by the secretary of state. The uniform fee for filing forms of a size other than that officially approved by the secretary of state shall be six dollars, plus one dollar per page for attachments.

(7) If the debtor is a transmitting utility (subsection (5) of section 400.9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection (6) of section 400.9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(8) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 400.9-103, or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.**]**

[400.009-404. RIGHTS ACQUIRED BY ASSIGNEE — CLAIMS AND DEFENSES AGAINST ASSIGNEE. — (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof on officially approved forms shall be four dollars. The uniform fee for filing and indexing such an assignment or statement thereof made on forms of a size other than that officially approved by the secretary of state shall be six dollars, plus one dollar per page for attachments. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) No fee shall be charged for filing, indexing, sending or delivering a termination statement.**]**

[400.009-405. MODIFICATION OF ASSIGNED CONTRACT. — (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 400.9-403(5). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment on officially approved forms shall be six dollars. The uniform fee for filing forms of a size other than that officially approved by the secretary of state shall be six dollars, plus one dollar per page for attachments.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall

note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 400.9-103, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be four dollars if the statement is of the standard size prescribed by the secretary of state and otherwise shall be six dollars, plus one dollar per page for attachments. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of section 400.9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this chapter.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.**]**

[400.009-406. DISCHARGE OF ACCOUNT DEBTOR — NOTIFICATION OF ASSIGNMENT — IDENTIFICATION AND PROOF OF ASSIGNMENT — RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES AND PROMISSORY NOTES INEFFECTIVE. — A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 400.9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be four dollars if the statement is of the standard size prescribed by the secretary of state and otherwise shall be six dollars, plus one dollar per page for attachments.**]**

[400.009-407. RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST. — (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be eight dollars. Upon request the filing officer shall issue his certificate showing a copy of all filed financing statements and statements of assignment naming a particular debtor. The uniform fee for such a certificate shall be eight dollars, plus fifty cents per page copied after ten pages.**]**

[400.009-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH CARE INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE. — Notwithstanding any other provisions of this chapter, the following special provisions apply where a financing statement is required to be filed for record in the office where a mortgage on the real estate concerned would be filed for record.

(1) Any amendment, continuation statement, termination statement, statement of assignment, or statement of release incidental to such a financing statement shall be filed for record in the same office where the original financing statement is recorded.

(2) In addition to other requirements of this part of this chapter, every such statement incidental to such a financing statement shall refer to the original financing statement by book and page of the record thereof.

(3) Such financing statements and such other statements incidental thereto shall be recorded in the real estate mortgage records, and shall be indexed as real estate mortgages. If any statement shows the name of a record owner of the real estate which is other than the name of the debtor or the secured party, the statement also shall be indexed in the mortgagor index according to the name of such record owner. Such financing statements and such other statements incidental thereto are entitled to be recorded even though not proved or acknowledged and certified. Fees for recording and related services shall be the same as the fees authorized by law in the case of real estate mortgages.

(4) The recorder of deeds shall not be liable for any loss resulting from failure of the recorder to record and index a financing statement or other statement incidental thereto as a mortgage on real estate unless it is clearly evident that such recording is desired, either by written instructions endorsed on the financing statement or other statement incidental thereto directing that it be recorded and indexed as a mortgage on real estate, by payment of the recording fee, or otherwise.**]**

[400.009-409. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-CREDIT RIGHTS INEFFECTIVE. — A consignor or lessor of goods may file a financing statement using the terms "consignor", "consignee", "lessor", "lessee" or the like instead of the terms specified in section 400.9-402. The provisions of this part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (section 400.1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.**]**

[400.009-501. FILING OFFICE. — (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 400.9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in section 400.9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of section 400.9-504 and section 400.9-505) and with respect to redemption of collateral (section 400.9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of section 400.9-502 and subsection (2) of section 400.9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of section 400.9-504 and subsection (1) of section 400.9-505 which deal with disposition of collateral;

(c) subsection (2) of section 400.9-505 which deals with acceptance of collateral as discharge of obligation;

(d) section 400.9-506 which deals with redemption of collateral; and

(e) subsection (1) of section 400.9-507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.**]**

[400.009-502. CONTENTS OF FINANCING STATEMENT — RECORD OF MORTGAGE AS FINANCING STATEMENT — TIME OF FILING FINANCIAL STATEMENT. — (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 400.9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.**]**

[400.009-503. NAME OF DEBTOR AND SECURED PARTY. — Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 400.9-504.**]**

[400.009-504. INDICATION OF COLLATERAL. — (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling or leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorney fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor. If he has not signed after default a statement renouncing or modifying his right to notification of sale, but no such statement shall be effective in the case of consumer goods. In the case of consumer goods, no other notification need be sent. In other cases, notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.**]**

[400.009-505. FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS, AND OTHER TRANSACTIONS. — (1) If the debtor has paid sixty percent of the cash price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 400.9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 400.9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor. Except in cases of consumer goods, notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under section 400.9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.**]**

[400.009-506. EFFECT OF ERRORS OR OMISSIONS. — At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 400.9-504 or before the obligation has been discharged under section 400.9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorney fees and legal expenses.**]**

[400.009-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT. — (1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.**]**

[400.009-508. EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT. — The secretary of state may collect an additional fee of five dollars on each and every fee paid to the secretary of state as required in chapter 400.9. All fees collected as provided in this section shall be deposited in the state treasury and credited to the secretary of state's technology trust fund account.**]**

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to ensure the efficient operation of business procedures regulated by the secretary of state in this state, section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect on July 1, 2001.

Approved June 29, 2001

SB 290 [HS SCS SB 290]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Increases benefits for the Kansas City police and civilian police employee retirement system.

AN ACT to repeal sections 56.807, 56.816, 86.200, 86.207, 86.213, 86.233, 86.237, 86.250, 86.251, 86.252, 86.253, 86.256, 86.257, 86.260, 86.263, 86.267, 86.288, 86.290, 86.292, 86.300, 86.320, 86.340, 86.353, 86.360, 86.365, 86.370, 86.447, 86.450, 86.457, 86.463, 86.483, 86.600, 86.620, 86.675, 86.690, 86.750, 86.780, 87.120, 87.130, 87.135, 87.170, 87.185, 87.205, 87.215, 87.237, 87.240, 87.288, 87.310, 87.371 and 87.615, RSMo 2000, relating to certain relief and pension systems, and to enact in lieu thereof fifty-two new sections relating to the same subject, with penalty provisions.

SECTION

A. Enacting clause.
56.807. Local payments, amounts — prosecuting attorneys and circuit attorneys' retirement system fund created — donations may be accepted.
56.816. Normal annuity, computation of — reserve account established, purpose.
86.200. Definitions.
86.207. Members of system, who are.
86.213. Board of trustees to administer — members of board, selection — terms.
86.233. Records of board — annual report.
86.237. Legal adviser — medical board — appointment of administrator.
86.250. Members may retire when — application to board to be made when — compulsory retirement.
86.251. Deferred retirement option plan — election — deposit of retirement allowance in DROP account — termination of participation, when — forms of payment — effect of participation — death of member, payment of funds — accidental disability retirement allowance, effect — interest, amount — approval by IRS — election for monthly survivor annuity, when.
86.252. Distribution of interest of member, when — distribution periods.
86.253. Service retirement allowance, how calculated — military service credit — contributions refund, when — retiree, surviving spouses, special consultants, when, benefits reduced, when.
86.256. Annual benefit not to exceed certain amount — annual additions not to exceed certain amount — combined plan limitation not to be exceeded — incorporation by reference of Internal Revenue Code.
86.257. Disability retirement allowance granted, when.
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Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 56.807, 56.816, 86.200, 86.207, 86.213, 86.233, 86.237, 86.250, 86.251, 86.252, 86.253, 86.256, 86.257, 86.260, 86.263, 86.267, 86.288, 86.290, 86.292, 86.300, 86.320, 86.340, 86.353, 86.360, 86.365, 86.370, 86.447, 86.450, 86.457, 86.463, 86.483, 86.600, 86.620, 86.675, 86.690, 86.750, 86.780, 87.120, 87.130, 87.135, 87.170, 87.185, 87.205, 87.215, 87.237, 87.240, 87.288, 87.310, 87.371 and 87.615, RSMo 2000, are repealed and fifty-two new sections enacted in lieu thereof, to be known as sections 56.807, 56.816, 86.200, 86.207, 86.213, 86.233, 86.237, 86.250, 86.251, 86.252, 86.253, 86.256, 86.257, 86.260, 86.263, 86.267, 86.288, 86.290, 86.292, 86.300, 86.320, 86.340, 86.353, 86.360, 86.365, 86.370, 86.447, 86.450, 86.457, 86.463, 86.483, 86.600, 86.620, 86.671, 86.675, 86.690, 86.750, 86.780, 87.120, 87.130, 87.135, 87.170, 87.185, 87.205, 87.215, 87.237, 87.240, 87.288, 87.310, 87.371, 87.615 and 1, to read as follows:

56.807. LOCAL PAYMENTS, AMOUNTS — PROSECUTING ATTORNEYS AND CIRCUIT ATTORNEYS' RETIREMENT SYSTEM FUND CREATED — DONATIONS MAY BE ACCEPTED. — 1. The funds for prosecuting attorneys and circuit attorneys provided for in subsection 2 of this section shall be paid from county or city funds.

2. Beginning thirty days after the establishment of this system and monthly thereafter, each county treasurer shall pay to the system the following amounts to be drawn from the general revenues of the county:

(1) For counties of the third and fourth classification **except as provided in subdivision (3) of this subsection**, three hundred seventy-five dollars;

(2) For counties of the second classification, five hundred forty-one dollars and sixty-seven cents;

(3) For counties of the first classification**, counties which pursuant to section 56.363 elect to make the position of prosecuting attorney and full-time position after August 28, 2001,** and the city of St. Louis, one thousand two hundred ninety-one dollars and sixty-seven cents.

3. The county treasurer shall at least monthly transmit the sums specified in subsection 2 of this section to the Missouri office of prosecution services for deposit to the credit of the "Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund", which is hereby created. All moneys held by the state treasurer on behalf of the system shall be paid to the system within ninety days after August 28, 1993. Moneys in the Missouri prosecuting attorneys and circuit attorneys' retirement system fund shall be used only for the purposes provided in sections 56.800 to 56.840 and for no other purpose.

4. The board may accept gifts, donations, grants and bequests from private or public sources to the Missouri prosecuting attorneys and circuit attorneys' retirement system fund.

5. No state moneys shall be used to fund section 56.700 and sections 56.800 to 56.840 unless provided for by law.

56.816. NORMAL ANNUITY, COMPUTATION OF — RESERVE ACCOUNT ESTABLISHED, PURPOSE. — 1. The normal annuity of a retired member who served as prosecuting attorney of a county of the third or fourth class shall**, except as provided in subsection 3 of this section,** be equal to:

(1) Any member who has served twelve or more years as a prosecuting attorney and who meets the conditions of retirement at or after the member's normal retirement age shall be entitled to a normal annuity in a monthly amount equal to one hundred five dollars multiplied by the number of two-year periods and partial two-year periods served as a prosecuting attorney;

(2) Any member who has served twenty or more years as a prosecuting attorney and who meets the conditions of retirement at or after the member's normal retirement age shall be entitled to a normal annuity in a monthly amount equal to one hundred thirty dollars multiplied by the number of two-year periods and partial two-year periods as a prosecuting attorney.

2. The normal annuity of a retired member who served as prosecuting attorney of a first or second class county or as circuit attorney of a city not within a county shall be equal to fifty percent of the final average compensation.

3. **The normal annuity of a retired member who served as a prosecuting attorney of a county which after August 28, 2001, elected to make the position of prosecuting attorney full-time pursuant to section 56.363 shall be equal to fifty percent of the final average compensation.**

4. The actuarial present value of a retired member's benefits shall be placed in a reserve account designated as a "Retired Lives Reserve". The value of the retired lives reserve shall be increased by the actuarial present value of retiring members' benefits, and by the interest earning of the total fund on a pro rata basis and it shall be decreased by payments to retired members and their survivors. Each year the actuary shall compare the actuarial present value of retired members' benefits with the retired lives reserve. If the value of the retired lives reserve plus one year's interest at the assumed rate of interest exceeds the actuarial present value of retired lives, then distribution of this excess may be made equally to all retired members, or their eligible survivors. The distribution may be in a single sum or in monthly payments at the discretion of the board on the advice of the actuary.

86.200. DEFINITIONS. — The following words and phrases as used in sections 86.200 to 86.366, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Accumulated contributions", the sum of all **[**amounts**]** **mandatory contributions** deducted from the compensation of a member and credited to the member's individual account, together with members' interest thereon;

(2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of mortality tables and interest assumptions adopted by the board of trustees;

(3) "Average final compensation",

(a) With respect to a member who earns no creditable service on or after October 1, 2001, the average earnable compensation of the member during the member's last three years of creditable service as a police officer, or if the member has had less than three years of creditable service, the average earnable compensation of the member's entire period of creditable service;

(b) With respect to a member who is not participating in the DROP pursuant to section 86.251 on October 1, 2001, who did not participate in the DROP at any time before such date, and who earns any creditable service on or after October 1, 2001, the average earnable compensation of the member during the member's last **[**three**]** **two** years of creditable service as a policeman, or if the member has had less than **[**three**]** **two** years of creditable service, then the average earnable compensation of the member's entire period of creditable service;

(c) With respect to a member who is participating in the DROP pursuant to section 86.251 on October 1, 2001, or whose participation in DROP ended before such date, who

returns to active participation in the system pursuant to section 86.251, and who terminates employment as a police officer for reasons other than death or disability before earning at least two years of creditable service after such return, the portion of the member's benefit attributable to creditable service earned before DROP entry shall be determined using average final compensation as defined in subparagraph (a) of this subdivision; and the portion of the member's benefit attributable to creditable service earned after return to active participation in the system shall be determined using average final compensation as defined in subparagraph (b) of this subdivision;

(d) With respect to a member who is participating in the DROP pursuant to section 86.251 on October 1, 2001, or whose participation in the DROP ended before such date, who returns to active participation in the system pursuant to section 86.251, and who terminates employment as a police officer after earning at least two years of creditable service after such return, the member's benefit attributable to all of such member's creditable service shall be determined using the member's average final compensation as defined in subparagraph (b) of this subdivision;

(e) With respect to a member who is participating in the DROP pursuant to section 86.251 on October 1, 2001, or whose participation in DROP ended before such date, who returns to active participation in the system pursuant to section 86.251, and whose employment as a police officer terminates due to death or disability after such return, the member's benefit attributable to all of such member's creditable service shall be determined using the member's average final compensation as defined in subparagraph (b) of this subdivision; and

(f) If a member who is described in subparagraph (c) or (e) of this subdivision completes less than one full year of creditable service after returning to active participation in the system, the member's earnable compensation for the period immediately prior to DROP entry shall be added to the member's earnable compensation after the member's return to active participation for purposes of determining such member's average final compensation for his or her last year of creditable service.

(4) "Beneficiary", any person in receipt of a retirement allowance or other benefit;

(5) "Board of police commissioners", any board of police commissioners, police commissioners and any other officials or boards now or hereafter authorized by law to employ and manage a permanent police force in such cities;

(6) "Board of trustees", the board provided in sections 86.200 to 86.366 to administer the retirement system;

(7) "Creditable service", prior service plus membership service as provided in sections 86.200 to 86.366;

(8) "DROP", the deferred retirement option plan provided for in section 86.251;

(9) "Earnable compensation", the annual salary which a member would earn during one year on the basis of the member's rank or position as specified in the applicable salary matrix in section 84.160, RSMo, plus additional compensation for academic work as provided in subsection 9 of section 84.160, RSMo, plus shift differential as provided in subdivision (4) of subsection 10 of section 84.160, RSMo. Such amount shall be determined without regard to the member's deferrals to a deferred compensation plan pursuant to Section 457 of the Internal Revenue Code or to a cafeteria plan pursuant to Section 125 of the Internal Revenue Code. Earnable compensation shall not include a member's additional compensation for overtime, standby time, court time, nonuniform time or unused vacation time. Notwithstanding the foregoing, the earnable compensation taken into account under the plan established pursuant to sections 86.200 to 86.366 with respect to a member who is a noneligible participant, as defined in this subdivision, for any plan year beginning on or after October 1, 1996, shall not exceed the amount of compensation that may be taken into account under Section 401(a)(17) of the Internal Revenue Code, as adjusted for increases in the cost of living, for such plan year. **[**If a member who is a noneligible participant is a highly compensated employee, as defined in Section 414(q)

of the Internal Revenue Code, and one of the ten persons paid the highest compensation by the employer for the plan year, the aggregate earnable compensation of the member's family members who are members, including only the member's spouse and lineal descendants who have not reached the age of nineteen years, shall not exceed the compensation limit of Section 401(a)(17) of the Internal Revenue Code.**]** For purposes of this subdivision, a "noneligible participant" is an individual who first becomes a member on or after the first day of the first plan year beginning after the earlier of:

(a) The last day of the plan year that includes August 28, 1995; or

(b) December 31, 1995;

(10) "Internal Revenue Code", the federal Internal Revenue Code of 1986, as amended;

(11) **"Mandatory contributions", the contributions required to be deducted from the salary of each member who is not participating in DROP in accordance with section 86.320;**

(12) "Medical board", the board of physicians provided for in section 86.237;

[(12)**] (13)** "Member", a member of the retirement system as defined by sections 86.200 to 86.366;

(14) "Members' interest", interest on accumulated contributions at such rate as may be set from time to time by the board of trustees;

[(13)**] (15)** "Membership service", service as a policeman rendered since last becoming a member, except in the case of a member who has served in the armed forces of the United States and has subsequently been reinstated as a policeman, in which case "membership service" means service as a policeman rendered since last becoming a member prior to entering such armed service;

[(14)**] (16)** "Plan year" or "limitation year", the twelve consecutive-month period beginning each October first and ending each September thirtieth;

[(15)**] (17)** "Policeman" or "police officer", any member of the police force of such cities who holds a rank in such police force for which the annual salary is listed in section 84.160, RSMo;

[(16)**] (18)** "Prior service", all service as a policeman rendered prior to the date the system becomes operative or prior to membership service which is creditable in accordance with the provisions of sections 86.200 to 86.366;

[(17) "Members' interest", interest on accumulated contributions at such rate as may be set from time to time by the board of trustees;

(18)**] (19)** "Retirement allowance", annual payments for life as provided by sections 86.200 to 86.366 which shall be payable in equal monthly installments or any benefits in lieu thereof granted to a member upon **termination of employment as a police officer and actual** retirement;

[(19)**] (20)** "Retirement system", the police retirement system of the cities as defined in sections 86.200 to 86.366;

[(20)**] (21)** "Surviving spouse", the surviving spouse of a member who was the member's spouse at the time of the member's death.

86.207. MEMBERS OF SYSTEM, WHO ARE. — 1. All persons who become policemen and all policemen who enter or reenter the service of the city after the first day of October, 1957, become members as a condition of their employment and shall receive no pensions or retirement allowance from any other pension or retirement system supported wholly or in part by the city or the state of Missouri, nor shall they be required to make contributions under any other pension or retirement system of the city or the state of Missouri, anything to the contrary notwithstanding.

2. If any member ceases to be in service for more than one year unless the member has attained the age of fifty-five or has twenty years or more of creditable service, or if the member withdraws the member's accumulated contributions or if the member receives benefits under the retirement system or dies, the member thereupon ceases to be a member; except in the case of

a member who has served in the armed forces of the United States and has subsequently been reinstated as a policeman. A member who **has terminated employment as a police officer, has actually retired and** is receiving retirement benefits under the system shall be considered a retired member.

86.213. BOARD OF TRUSTEES TO ADMINISTER — MEMBERS OF BOARD, SELECTION — TERMS. — 1. The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of sections 86.200 to 86.366 are hereby vested in a board of trustees of ten persons. The board shall be constituted as follows:

(1) The president of the board of police commissioners of the city, ex officio. If the president is absent from any meeting of the board of trustees for any cause whatsoever, the president may be represented by any member of the board of police commissioners who in such case shall have full power to act as a member of the board of trustees;

(2) The comptroller of the city, ex officio. If the comptroller is absent from any meeting of the board of trustees for any cause whatsoever, the comptroller may be represented by either the deputy comptroller or the first assistant comptroller who in such case shall have full power to act as a member of the said board of trustees;

(3) Three members to be appointed by the mayor of the city to serve for a term of two years;

(4) Three members to be elected by the members of the retirement system of the city for a term of three years; provided, however, that the term of office of the first three members so elected shall begin immediately upon their election and one such member's term shall expire one year from the date the retirement system becomes operative, another such member's term shall expire two years from the date the retirement system becomes operative and the other such member's term shall expire three years from the date the retirement system becomes operative; provided, further, that such members shall be members of the system and hold office only while members of the system;

(5) Two members who shall be **[**retirees**] retired members** of the retirement system to be elected by the **[**retirees**] retired members** of the retirement system for a term of three years; except that, the term of office of the first two members so elected shall begin immediately upon their election and one such member's term shall expire two years from the date of election and the other such member's term shall expire three years from the date of election.

2. Any member elected chairman of the board of trustees may serve a total of four years in that capacity which shall be limited to no more than two consecutive terms.

3. Each commissioned elected trustee shall be granted travel time by the St. Louis metropolitan police department to attend any and all functions that have been authorized by the board of trustees of the police retirement system of St. Louis. Travel time for a trustee shall not exceed thirty days in any board fiscal year.

86.233. RECORDS OF BOARD — ANNUAL REPORT. — 1. The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the **[**various funds of the**]** retirement system and for checking the experience of the system.

2. The board of trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the retirement system for the preceding fiscal year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system.

86.237. LEGAL ADVISER — MEDICAL BOARD — APPOINTMENT OF ADMINISTRATOR. — 1. The **[**city counselor of the said cities shall be the legal adviser of the**]** board of trustees **is authorized to use the city counselor of the specified cities as a legal advisor to the board of trustees and may also appoint an attorney at law or firm of attorneys at law to serve**

as the legal advisor and consultant to the board of trustees and to represent the system and the board of trustees in all legal proceedings.

2. The board of trustees shall designate a medical board to be composed of three physicians who shall arrange for and pass upon all medical examinations required under the provisions of sections 86.200 to 86.366, shall investigate all essential statements and certificates made by or on behalf of a member in connection with an application for disability retirement and shall report in writing to the board of trustees its conclusions and recommendations upon all the matters referred to it. In addition, the board of trustees may appoint a fourth physician to act as an administrator of the medical board who may, with the consent of the board of trustees, select the members of the medical board and coordinate any reports to the board of trustees.

86.250. MEMBERS MAY RETIRE WHEN — APPLICATION TO BOARD TO BE MADE WHEN — COMPULSORY RETIREMENT. — Retirement of a member on a service retirement allowance shall be made by the board of trustees as follows:

(1) Any member may **terminate employment as a police officer and actually** retire after completing twenty or more years of creditable service or attaining the age of fifty-five upon the member's written application to the board of trustees setting forth at what time, but not more than ninety days subsequent to the execution and filing of the application, the member desires to be retired;

(2) Any member in service who has attained the age of sixty-five shall be **terminated as a police officer and actually** retired forthwith provided that upon request of the board of police commissioners the board of trustees may permit such member to remain in service for periods of not to exceed one year from the date of the last request from the board of police commissioners.

86.251. DEFERRED RETIREMENT OPTION PLAN — ELECTION — DEPOSIT OF RETIREMENT ALLOWANCE IN DROP ACCOUNT — TERMINATION OF PARTICIPATION, WHEN — FORMS OF PAYMENT — EFFECT OF PARTICIPATION — DEATH OF MEMBER, PAYMENT OF FUNDS — ACCIDENTAL DISABILITY RETIREMENT ALLOWANCE, EFFECT — INTEREST, AMOUNT — APPROVAL BY IRS — ELECTION FOR MONTHLY SURVIVOR ANNUITY, WHEN. — 1. The board of trustees may develop and establish a deferred retirement option plan (DROP) in which members **who are** eligible for retirement **but who have not terminated employment as police officers and who have not actually retired** may participate. The DROP shall be designed to allow members with at least twenty years of creditable service or who have attained the age of fifty-five who have achieved eligibility for retirement and are entitled to a service retirement allowance and other benefits to **postpone actual retirement,** continue active employment and accumulate a deferred receipt of the service retirement allowance. No one shall participate in the DROP for a period exceeding five years.

2. Any member who has at least twenty years of creditable service or has attained the age of fifty-five may elect in writing before retirement to participate in the DROP. A member electing to participate in the DROP shall **postpone actual retirement, shall** continue in active employment and shall not receive any direct retirement allowance payments or benefits during the period of participation.

3. Upon the start of the participation in the DROP, the member shall cease to make any **mandatory** contributions to the system. No contribution shall be required by the city into the DROP account. During the period of participation in the DROP, the amount that the member would have received as a service retirement allowance if the member had **actually** retired **instead of entering DROP** shall be deposited monthly in the member's DROP account which shall be established in the member's name by the board of trustees. The member's service retirement allowance shall not be adjusted for any cost-of-living increases for any period prior to the member's **termination of employment as a police officer and actual** retirement. Cost-of-living increases, if any, for any period following the member's **termination of employment**

as a police officer and actual retirement shall be applied only to monthly service retirement payments made following **termination of employment as a police officer and actual** retirement. Service earned during the period of participation in the DROP shall not be creditable service and shall not be counted in determination of any service retirement allowance or surviving spouse's or dependents' benefits. **Compensation paid during the period of participation in the DROP shall not be earnable compensation and shall not be counted in the determination of any service retirement allowance or surviving spouse's or dependent's benefits. The member's service retirement allowance shall be frozen as of the date the member enters DROP. Except as specifically provided in sections 86.200 to 86.366, the member's frozen service retirement allowance shall not increase while the member is participating in DROP or after the member's participation in DROP ends, and the member shall not share in any benefit improvement that is enacted or that becomes effective while such member is participating in the DROP.**

4. **[**The member's contributions to the retirement system shall be paid to the member or the member's surviving spouse pursuant to sections 86.253 and 86.288 within sixty days after the member's date of retirement and not the date of the conclusion of the member's participation in the DROP, unless such dates are the same.

5.**]** A member shall cease participation in the DROP upon the **[**earlier of the**]** termination of the member's employment as a police officer **and actual retirement,** or at the end of the five-year period commencing on the first day of the **member's** participation in the DROP**, or as of the effective date, but in no event prior to October 1, 2001, of the member's election to return to active participation in the system, whichever occurs first. A member's election to return to active participation in the system before the end of the five-year period commencing on the first day of participation in the DROP shall be made and shall become effective in accordance with procedures established by the board of trustees, but in no event prior to October 1, 2001**. **Upon the member's termination of employment as a police officer and actual retirement,** the member shall**[**, upon the member's termination of employment,**]** elect to receive the **[**amount in**]** **value of** the member's DROP account**[**, including any accrued interest**]**, in one of the following forms of payment:

(a) A lump sum payment; or

(b) Equal monthly installments over a ten-year period.

[Any interest earned pursuant to this section during the installment period shall be paid as soon as reasonably possible after the final monthly installment.**]** Either form of payment should begin within thirty days after the member's notice to the board of trustees that the member has selected a particular option.

[6. A member who has elected to participate in the DROP may not reenter the system in any fashion. At the conclusion of the member's participation in the DROP by reason of the expiration of the five-year period, if the member does not terminate the member's employment as a police officer in the city for which the retirement system was established pursuant to sections 86.200 to 86.366, the member shall continue not to have any percentage of the member's salary deducted for a contribution nor shall any of the member's employment period count as creditable service.**]**

5. If a member who is participating in the DROP elects to return to active participation in the system or if a member who is participating in the DROP does not terminate employment as a police officer in the city for which the retirement system was established pursuant to sections 86.200 to 86.366 and actually retires at the end of the five-year period commencing on the first day of the member's participation in the DROP, the member shall return to active participation in the system and shall resume making mandatory contributions to the system effective as of the day after participation in the DROP ends or, if later, October 1, 2001. The board of trustees shall notify the police commissioners to begin deducting mandatory contributions from the member's salary and

the member's employment period shall count as creditable service beginning as of the day the member returns to active participation.

6. In no event shall a member whose participation in DROP has ended for any reason be eligible to participate in DROP again.

7. Upon the member's termination of employment as a police officer and actual retirement, the member's mandatory contributions to the retirement system shall be paid to the member pursuant to subsection 4 of section 86.253.

[7.**] 8.** If a member dies prior to termination of employment **as a police officer and actual retirement** while participating in the DROP or before the member has received full withdrawal of the amount in the member's DROP account under the installment optional payment form, the **[**funds in**] remaining balance of** the member's DROP account**[**, including any accumulated interest,**]** shall be payable to the member's surviving spouse; or, if the member is then unmarried, to the member's dependent children in equal shares; or, if none, to the member's dependent mother or father; or, if none, to the member's designated beneficiary or, if no such beneficiary is then living, to the member's estate. Payment shall be made within sixty days after the retirement system is notified of the member's death. **In addition, the member's mandatory contributions, if any, that were not already paid to the member pursuant to subsection 4 of section 86.253 shall be paid to the member's surviving spouse pursuant to section 86.288.**

[8.**] 9.** If a member has elected to participate in the DROP and during such participation period applies for and receives benefits for an accidental disability retirement allowance pursuant to the provisions of section 86.263, the member shall forfeit all rights, claims or interest in the member's DROP account and the member's benefits shall be calculated as if the member has continued in employment and had not elected to participate in the DROP. Any portion of a DROP account that has been forfeited as provided in this subsection shall be a general asset of the system.

[9.**] 10.** A member's DROP account shall earn interest equal to the rate of return earned by the system's investment portfolio on a market value basis, including realized and unrealized gains and losses, net of investment expense, as certified by the system's actuary. As of the first day of each year, beginning with the second fiscal year of participation, the member's DROP account balance, determined as of the first day of such year, shall be credited with interest at the investment rate earned by the assets of the retirement system for the prior year. If distribution of the member's DROP account balance is completed during the year, interest shall be credited, based on the beginning balance for the year, in proportion to the part of the year preceding the date of final distribution. No interest shall be credited on amounts, if any, added to the member's DROP account during the year in which the distribution of the account is completed. **If the member's DROP account is paid in equal monthly installments pursuant to subsection 5 of this section, any interest credited to the DROP account during the installment period shall be paid as soon as reasonably possible after the final monthly installment.**

[10.**] 11.** The board of trustees shall not incur any liability individually or on behalf of other individuals for any act or omission, made in good faith in relation to the DROP or assets credited to DROP accounts**[**.

11. The DROP**]** established by this section. The provisions of the Internal Revenue Code and regulations promulgated thereunder shall supersede any **[**DROP**]** provision **of this section** if there is any inconsistency with the Internal Revenue Code or regulation.

12. Upon the receipt by the board of trustees of evidence and proof that the death of a member resulted from an event occurring while the member was in the actual performance of duty, and if the member is participating in the DROP, the member's surviving spouse or, if the member is then unmarried, the member's unmarried dependent children, may elect within thirty days after the member's death to have the amount in the member's DROP account paid in the form of a monthly survivor annuity. Payment of the survivor annuity shall begin within sixty days after the election is received. Payment to the member's surviving spouse shall continue until

the surviving spouse's death; payment to the member's unmarried dependent children shall be made while any child qualifies as an unmarried dependent child pursuant to section 86.280. The survivor annuity shall be the actuarial equivalent of the member's DROP account as of the date payment begins. In no event shall the total amount paid pursuant to this subsection be less than the member's DROP account balance as of the date payment begins.

86.252. DISTRIBUTION OF INTEREST OF MEMBER, WHEN — DISTRIBUTION PERIODS. — Notwithstanding any provision of sections 86.200 to 86.366, to the contrary, the entire interest of a member shall be distributed or begin to be distributed no later than the member's required beginning date. The general required beginning date of a member's benefit is April first of the calendar year following the calendar year in which the member attains age seventy and one-half years or, if later, in which the member **terminates employment as a police officer and actually** retires. All distributions required pursuant to this section shall be determined and made in accordance with the income tax regulations under Section 401(a)(9) of the Internal Revenue Code, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the income tax regulations. As of the first distribution year, distributions, if not made in a single sum, may only be made over one of the following periods, or a combination thereof:

(1) The life of the member;

(2) The life of the member and a designated beneficiary;

(3) A period certain not extending beyond the life expectancy of the member; or

(4) A period certain not extending beyond the joint and last survivor expectancy of the member and a designated beneficiary.

86.253. SERVICE RETIREMENT ALLOWANCE, HOW CALCULATED — MILITARY SERVICE CREDIT — CONTRIBUTIONS REFUND, WHEN — RETIREE, SURVIVING SPOUSES, SPECIAL CONSULTANTS, WHEN, BENEFITS REDUCED, WHEN. — 1. Upon **termination of employment as a police officer and actual** retirement for service, a member shall receive a service retirement allowance which shall be an amount equal to two percent of the member's average final compensation multiplied by the number of years of the member's creditable service, up to twenty-five years, plus an amount equal to four percent of the member's average final compensation for each year of creditable service in excess of twenty-five years but not in excess of thirty years; plus an additional five percent of the member's average final compensation for any creditable service in excess of thirty years. Notwithstanding the foregoing, the service retirement allowance of a member who does not earn any creditable service after August 11, 1999, shall not exceed an amount equal to seventy percent of the member's average final compensation, and the service retirement allowance of a member who earns creditable service on or after August 12, 1999, shall not exceed an amount equal to seventy-five percent of the member's average final compensation**; provided, however, that the service retirement allowance of a member who is participating in the DROP pursuant to section 86.251 on August 12, 1999, who returns to active participation in the system pursuant to section 86.251, and who terminates employment as a police officer and actually retires for reasons other than death or disability before earning at least two years of creditable service after such return shall be the sum of (1) the member's service retirement allowance as of the date the member entered DROP and (2) an additional service retirement allowance based solely on the creditable service earned by the member following the member's return to active participation. The member's total years of creditable service shall be taken into account for the purpose of determining whether the additional allowance attributable to such additional creditable service is two percent, four percent or five percent of the member's average final compensation**.

2. If, at any time since first becoming a member of the retirement system, the member has served in the armed forces of the United States, and has subsequently been reinstated as a policeman within ninety days after the member's discharge, the member shall be granted credit

for such service as if the member's service in the police department of such city had not been interrupted by the member's induction into the armed forces of the United States. If earnable compensation is needed for such period in computation of benefits it shall be calculated on the basis of the compensation payable to the officers of the member's rank during the period of the member's absence. Notwithstanding any provision of sections 86.200 to 86.366 to the contrary, the retirement system governed by sections 86.200 to 86.366 shall be operated and administered in accordance with the applicable provisions of the Uniformed Services Employment and Reemployment Rights Act of **[**1984**] 1994**, as amended.

3. The service retirement allowance of each present and future retired member who **terminated employment as a police officer and actually** retired from service after attaining age fifty-five or after completing twenty years of creditable service shall be increased annually at a rate not to exceed three percent as approved by the board of trustees beginning with the first increase in the second October following the member's retirement and subsequent increases in each October thereafter, provided that each increase is subject to a determination by the board of trustees that the consumer price index (United States City Average Index) as published by the United States Department of Labor shows an increase of not less than the approved rate during the latest twelve-month period for which the index is available at the date of determination; and provided further, that if the increase is in excess of the approved rate for any year, such excess shall be accumulated as to any retired member and increases may be granted in subsequent years subject to a maximum of three percent for each full year from October following the member's retirement but not to exceed a total percentage increase of thirty percent. In no event shall the increase described under this subsection be applied to the amount, if any, paid to a member or surviving spouse of a deceased member for services as a special consultant under subsection 5 of this section or, if applicable, subsection 6 of this section. If the board of trustees determines that the index has decreased for any year, the benefits of any retired member that have been increased shall be decreased but not below the member's initial benefit. No annual increase shall be made of less than one percent and no decrease of less than three percent except that any decrease may be limited in amount by the initial benefit.

4. In addition to any other retirement allowance payable under this section and section 86.250, a member, upon **termination of employment as police officer and actual** service retirement, shall be repaid the total amount of the member's **[**contribution**] mandatory contributions** to the retirement system without interest. The board shall pay the retired member such total amount of the member's **[**contribution**] mandatory contributions** to the retirement system **to be paid pursuant to this subsection** within sixty days after such retired member's date of **termination of employment as a police officer and actual** retirement.

5. Any person who is receiving retirement benefits from the retirement system, upon application to the board of trustees, shall be made, constituted, appointed and employed by the board of trustees as a special consultant on the problems of retirement, aging and other matters, for the remainder of the person's life or, in the case of a deceased member's surviving spouse, until the earlier of the person's death or remarriage, and upon request of the board of trustees shall give opinions and be available to give opinions in writing or orally, in response to such requests, as may be required. For such services the special consultant shall be compensated monthly, in an amount which, when added to any monthly retirement benefits being received from the retirement system, including any cost-of-living increases under subsection 3 of this section, shall total six hundred fifty dollars a month. This employment shall in no way affect any person's eligibility for retirement benefits under this chapter, or in any way have the effect of reducing retirement benefits, notwithstanding any provisions of law to the contrary.

86.256. ANNUAL BENEFIT NOT TO EXCEED CERTAIN AMOUNT — ANNUAL ADDITIONS NOT TO EXCEED CERTAIN AMOUNT — COMBINED PLAN LIMITATION NOT TO BE EXCEEDED — INCORPORATION BY REFERENCE OF INTERNAL REVENUE CODE. — 1. In no event shall a member's annual benefit paid under the plan established pursuant to sections 86.200 to 86.366,

exceed the amount specified in Section 415(b) of the Internal Revenue Code, as adjusted for any applicable increases in the cost of living, as in effect on the last day of the plan year, including any increases after the member's termination of employment.

2. In no event shall the annual additions to the plan established pursuant to sections 86.200 to 86.366, on behalf of the member, including the member's own **mandatory** contributions, exceed the lesser of:

(1) Twenty-five percent of the member's compensation, as defined for purposes of Section 415(c) of the Internal Revenue Code; or

(2) Thirty thousand dollars, as adjusted for increases in the cost of living.

3. Effective for limitation years beginning prior to January 1, 2000, in no event shall the combined plan limitation of Section 415(e) of the Internal Revenue Code be exceeded; provided that, if necessary to avoid exceeding such limitation, the member's annual benefit under the plan established pursuant to sections 86.200 to 86.366 shall be reduced to the extent necessary to satisfy such limitations.

4. For purposes of this section, Section 415 of the Internal Revenue Code, including the special rules under Section 415(b) applicable to governmental plans and qualified participants in police and fire department plans, is incorporated in this section by reference.

86.257. DISABILITY RETIREMENT ALLOWANCE GRANTED, WHEN. — Upon the application of a member in service or of the board of police commissioners, any member who has had ten or more years of creditable service shall **terminate employment as a police officer and shall** be **actually** retired by the board of trustees, not more than ninety days next following the date of filing such application on an ordinary disability retirement allowance; provided, that the medical board after a medical examination of such member shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent and that such member should be retired.

86.260. DISABILITY ALLOWANCE, HOW CALCULATED — MEMBERS AS SPECIAL CONSULTANTS, WHEN — BENEFITS FOR CHILDREN. — 1. Upon **termination of employment as a police officer and actual** retirement for ordinary disability a member shall receive a service retirement allowance if the member has attained the age of fifty-five or completed twenty years of creditable service; otherwise the member shall receive an ordinary disability retirement allowance which shall be equal to ninety percent of the member's accrued service retirement in section 86.253, but not less than one-fourth of the member's average final compensation; provided, however, that no such allowance shall exceed ninety percent of the member's accrued service retirement benefit based on continuation of the member's creditable service to the age set out in section 86.250.

2. Effective October 1, 1999, the ordinary disability retirement allowance will be increased by fifteen percent of the member's average final compensation for each unmarried dependent child of the disabled member who is under the age of eighteen, or who, regardless of age, is totally and permanently mentally or physically disabled and incapacitated from engaging in gainful occupation sufficient to support himself or herself, but not in excess of a total of three children; provided, however, that the combined benefit shall not exceed seventy percent of such average final compensation.

3. Any member receiving benefits pursuant to the provisions of this section immediately prior to October 1, 1999, shall upon application to the board of trustees, be made, constituted, appointed and employed by the board of trustees as a special consultant on the problems of retirement, aging and other matters while the member is receiving such benefits, and upon request of the board of trustees shall give opinions in writing or orally in response to such requests as may be required. Beginning October 1, 1999, for such services as may be required, there shall be payable an additional monthly compensation of one hundred dollars or five percent

of the member's average final compensation, whichever is greater, for each unmarried dependent child of the member, but not in excess of a total of three children.

4. Any benefit payable to or for the benefit of a child or children under the age of eighteen years pursuant to the provisions of subsections 2 and 3 of this section shall continue to be paid beyond the age of eighteen years through the age of twenty-two years in those cases where the child is a full-time student at a regularly accredited college, business school, nursing school, school for technical or vocational training, or university, but such extended benefit shall cease whenever the child ceases to be a student. A college or university shall be deemed to be regularly accredited which maintains membership in good standing in a national or regional accrediting agency recognized by any state college or university.

5. No benefits pursuant to this section shall be paid to a child over eighteen years of age who is totally and permanently disabled if such child is a patient or resident of a public-supported institution, nor shall such benefits be paid unless such disability occurred prior to such child reaching the age of eighteen.

86.263. SERVICE-CONNECTED ACCIDENTAL DISABILITY RETIREMENT. — Upon application by the member or the board of police commissioners any member who has become totally and permanently incapacitated for duty **at some definite time and place** as the natural and proximate result of an accident occurring while in the actual performance of duty through no negligence on the member's part, and if such accident occurred not more than five years prior to date of application unless the accident was reported and an examination made of the member by the medical staff of the board of police commissioners within five years of the date of the accident with subsequent examinations made as requested, shall be retired by the board of trustees provided that the medical board shall certify that such member is mentally or physically incapacitated for further performance of duty, that such incapacity is likely to be permanent and that such member should be retired; provided that if the accident occurred prior to the age and year set out in section 86.250, application for benefits must be made before such age and year except that the interval between date of accident and of application may be six months.

86.267. SERVICE-CONNECTED DISABILITY RETIREMENT ALLOWANCE CALCULATED, HOW — APPOINTMENT AS SPECIAL CONSULTANT, AMOUNT TO BE PAID, DUTIES. — 1. Upon **termination of employment as a police officer and actual** retirement for accidental disability, other than permanent total disability as defined in subsection 2, a member shall receive a retirement allowance of seventy-five percent of the member's average final compensation.

2. Any member who, as the natural and proximate result of an accident occurring **at some definite time and place** in the actual performance of the member's duty through no negligence on the member's part, is permanently and totally incapacitated from performing any work, occupation or vocation of any kind whatsoever shall receive a retirement allowance as under subsection 1 or, in the discretion of the board of trustees, may receive a larger retirement allowance in an amount not exceeding the member's rate of compensation as a policeman in effect as of the date the allowance begins.

3. The board of trustees, in its discretion, may, in addition to the allowance granted in accordance with the provisions of subsections 1 and 2, grant an allowance in an amount to be determined by the board of trustees, to provide such member with surgical, medical and hospital care reasonably required after retirement, which are the result and in consequence of the accident causing such disability.

4. Any person who is receiving benefits pursuant to subsection 2 of this section on or after August 28, 1997, **and any person who is receiving benefits pursuant to subsection 1 of this section on or after October 1, 2001, and who made mandatory contributions to the retirement system,** upon application to the board of trustees, shall be made, constituted, appointed and employed by the board of trustees as a special consultant on the problems of retirement, aging and other matters, and upon request of the board of trustees shall give opinions

and be available to give opinions in writing or orally, in response to such requests, as may be required. For such services the retired member shall be paid a lump sum payment in an amount equal to the total amount of the member's **mandatory** contributions to the retirement system, without interest, within sixty days after approval of the retired member's application by the board of trustees.

86.288. CONTRIBUTIONS PAID TO SURVIVING SPOUSES, WHEN. — In addition to any other benefits payable, notwithstanding any provisions of sections 86.280 and 86.287 to the contrary, if a member dies while commissioned as a peace officer, or after retiring and before receiving a refund of the member's **mandatory** contributions in accordance with section 86.253 or 86.290, or while receiving a disability retirement allowance in accordance with section 86.253 or 86.257, the total amount of the member's **[**contribution**] mandatory contributions** to the retirement system shall be paid without interest to the surviving spouse of such member. Payment pursuant to this section shall be made within sixty days after the later of the date proper proofs of death are provided or August 28, 1994, regardless of when the member died or **actually** retired, provided that the surviving spouse shall be alive on the date that payment is made.

86.290. ACCUMULATED CONTRIBUTIONS REFUNDED, WHEN. — Should a member cease to be a policeman except by death or **actual** retirement, the member may request payment of the amount of the accumulated contributions standing to the credit of the member's individual account, including members' interest, in which event such amount shall be paid to the member not later than one year after the member ceases to be a policeman. If the former member is reemployed as a policeman before any portion of such former member's accumulated contributions is distributed, no distribution shall be made. If the former member is reemployed as a policeman after a portion of the former member's accumulated contributions is distributed, the amount remaining shall also be distributed.

86.292. ACCUMULATED CONTRIBUTIONS TO REMAIN SYSTEM ASSETS, WHEN. — If the board of trustees is unable to refund the **accumulated** contributions of a member or to commence payment of benefits within five years after such refund or benefits are otherwise first due and payable, the accumulated contributions shall remain assets of the retirement system. If proper application is thereafter made for refund or benefits, the board shall make payment, but no credit shall be allowed for any interest after the date the refund or benefits were first due and payable.

86.300. TRUSTEES TO MANAGE FUNDS. — The board of trustees shall be the trustees of the assets of the retirement system created by sections 86.200 to 86.366 **[**as provided in section 86.317**]** and shall have full power to **[**invest and reinvest such assets, subject to all the terms, conditions, limitations and restrictions imposed by law upon life or casualty insurance companies in the state of Missouri in making and disposing of their investments; and subject to like terms, conditions, limitations and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in which any of the assets shall have been invested, as well as of the proceeds of said investments and any moneys belonging to the retirement system**] hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in which any of the assets shall have been invested, as well as the proceeds of such investments and any moneys belonging to the retirement system, subject to the terms, conditions and limitations provided in sections 105.687 to 105.689, RSMo**.

86.320. CONTRIBUTIONS, RATE OF — DEDUCTION FROM COMPENSATION. — 1. The board of trustees shall certify to the board of police commissioners and the board of police commissioners shall cause to be deducted from the salary of each member on each and every

payroll for each and every pay period, seven percent of the compensation of each member **who is** not participating in the DROP**, including each member whose participation in the DROP has ended and who has returned to active participation in the system pursuant to section 86.251,** and zero percent of the compensation of each member **who is** participating in the DROP or **[**after the conclusion of the member's participation in the DROP if the officer does not retire at that time**]** **whose participation in the DROP has ended but who has not returned to active participation in the system pursuant to section 86.251**.

2. The deductions provided for in this section shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every member shall be deemed to consent to the deductions made and provided for in this section, and shall receipt for the member's full salary or compensation and payment of salary or compensation less such deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered during the period covered by the payment except as to benefits provided by sections 86.200 to 86.366. The board of police commissioners shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees shall prescribe the amount deducted, and such amounts shall be paid into the system and shall be credited together with members' interest thereon to the individual account of the member from whose compensation such deduction was made.

3. The board of trustees is authorized to grant additional benefits for such parts of contributions as were made prior to the adoption of the seven-percent rate for all members which were in excess of the compulsory contributions required of each member.

86.340. ACCRUED LIABILITY CONTRIBUTION DISCONTINUED, WHEN. — The accrued liability contribution should be discontinued as soon as the accumulated reserve in the general **[**reserve**]** fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of said fund, less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of persons who are at that time members.

86.353. BENEFITS EXEMPT FROM TAXES AND EXECUTION — NOT ASSIGNABLE, EXCEPTION, CHILD SUPPORT OR MAINTENANCE. — The right of any person to a benefit, any other right accrued or accruing to any person under the provisions of sections 86.200 to 86.366 and the moneys created pursuant to sections 86.200 to 86.366 **[**are exempt from any tax of the state of Missouri and**]** are not subject to execution, garnishment, attachment or any other process whatsoever and are unassignable except as in sections 86.200 to 86.366 specifically provided. Notwithstanding the foregoing, nothing in this section shall prevent the board of trustees from honoring the terms of a court order requiring the retirement system to pay all or any portion of the retirement benefit otherwise payable to a retired or disabled member to a third party to satisfy the member's obligation to pay child support or maintenance. **Any relief association created pursuant to section 86.500 shall be exempt from the tax imposed by sections 143.011 to 143.1013, RSMo.**

86.360. CONSOLIDATION OF RETIREMENT SYSTEM CREATED BY SECTIONS 86.010 TO 86.193 WITH SYSTEM CREATED BY THIS LAW. — The board of trustees provided for by section 86.213 is hereby authorized to consolidate, combine and transfer funds provided by sections 86.010 to 86.193 with the funds provided by sections 86.200 to 86.366 in such a manner as will simplify the operations of the two systems. **[**The accounts of all members of the two systems will be in the members' savings fund, and the pension accumulation fund will be in the general reserve fund.**]** Separate records shall be maintained only to the extent necessary to determine and pay the benefits provided by sections 86.010 to 86.193 for those policemen electing not to become members of the retirement system provided by sections 86.200 to 86.366. The board of trustees may accept the membership records of the older system in lieu of the requirements

in section 86.210. The board of trustees may authorize the use of the same actuarial assumptions and interest rate in the calculation of the contributions by the cities for both systems and the accrued liability rate may be a combined rate for both systems.

86.365. SPECIAL ADVISORS, QUALIFICATIONS, COMPENSATION. — Any person who served as a policeman for a period of thirty years and who **terminated employment and actually** retired prior to October 1, 1957, in the police department of any city **[**having a population of over seven hundred thousand**] not within a county**, under the provisions of this chapter, shall, upon application to the police department of that city, be employed by the department as a special advisor and supervisor in connection with city police problems. Any person so employed shall perform such duties as the chief of police directs and shall receive a salary of one hundred dollars per month, payable out of the department budget pursuant to appropriations for the purpose; except that, the payment to the retired person for such services, together with the retirement benefits such retired person receives under this chapter, shall not exceed two hundred dollars per month. The employment provided for by this section shall in no way affect any person's eligibility for retirement benefits under any provision of this chapter.

86.370. DEFINITIONS. — The following words and phrases as used in sections 86.370 to 86.497, unless a different meaning is plainly required by the context, shall have the following meanings, and the use of masculine gender shall include the feminine:

(1) "Accumulated contributions", the sum of all amounts deducted from the compensation of a member and paid to the retirement board, together with all amounts paid to the retirement board by a member or by a member's beneficiary, for the purchase of prior service credits or any other purpose permitted under sections 86.370 to 86.497;

(2) "Beneficiary", any person in receipt of pension or other benefit as provided in sections 86.370 to 86.497;

(3) "Board of police commissioners", any board composed of police commissioners and any other officials or boards authorized by law to employ and manage an organized police force in the cities;

(4) "City" or "cities", any city which now has or may hereafter have a population of more than three hundred thousand and less than seven hundred thousand inhabitants;

(5) "Compensation", whenever used in connection with members of the police retirement system created by sections 86.370 to 86.497, and whether used solely or as part of another defined term, the regular compensation which a member would earn during one year on the basis of the stated compensation for his rank and position, and therefore excluding any overtime pay, meal and travel expenses, uniform or other clothing allowances, any sick leave or vacation entitlements accrued from prior years, college incentive or skill incentive allowances and any other allowances available only to particular individuals and not a part of the base stated compensation for all persons holding the given rank and position;

(6) "Creditable service", prior service plus membership service as provided in section 86.423;

(7) "Final compensation", the average annual compensation of a member during his service if less than two years, or the twenty-four months of his service for which he **or she** received the highest salary whether consecutive or otherwise. In computing the average annual compensation of a member under this subdivision, no compensation received for service which occurred after the thirtieth full year of membership service and no compensation attributable to any time a member was suspended from service without pay shall be included**. For any period of time when a member is paid on a frequency other than monthly, the member's salary for such period shall be deemed to be the monthly equivalent of the member's annual rate of compensation for such period**;

(8) "Fiscal year", the fiscal year of the cities;

(9) "Medical board", not less than one nor more than three physicians appointed by the retirement board to arrange for and conduct medical examinations as directed by the retirement board;

(10) "Member", a member of the police retirement system as defined in section 86.380;

(11) "Membership service", all service rendered as a policeman for compensation after June 15, 1946, excluding all probationary service of six months or less served prior to May 1, 1951;

(12) "Pension", annual payments for life, payable monthly, beginning with the date of retirement and ending with death; if the total of such monthly payments plus benefits pursuant to section 86.447 is less than the total of the member's accumulated contributions, the excess of such accumulated contributions over the total of such monthly payments shall be paid in one sum to the beneficiary named by the member;

(13) "Pension fund", the fund resulting from contributions made thereto by the cities affected by sections 86.370 to 86.497 and by the members of the police retirement system;

(14) "Policeman", entitled to membership in the police retirement system created by sections 86.370 to 86.497, is an officer or member of the police department of the cities employed for compensation by the boards of police commissioners of the cities for police duty and includes the chief of police, lieutenant colonels, majors, superintendents, captains, lieutenants, sergeants, corporals, detectives, patrolmen, supervisors, technicians, radio operators, radio dispatchers, jailers, and matrons, but does not include any police commissioner or members of the police reserve corps, or special officers appointed to serve at elections, or temporary police appointed at school crossings or special officers appointed to serve during emergencies, or anyone employed in a clerical or other capacity not involving police duties; except that any policeman as herein defined, who is assigned to the performance of other duties for the police departments of the cities, by reason of personal injury by accident or disability arising out of and in the course of his employment as a policeman, shall be and remain a member of the police retirement system without regard to the duties performed under such assignment; in case of dispute as to whether any person is a policeman qualified for membership in the retirement system, the decision of the board of police commissioners shall be final;

(15) "Retirement board", the board provided in section 86.393 to administer the retirement system;

(16) "Retirement system", the police retirement system of the cities as defined in section 86.373.

86.447. PENSIONS OF DEPENDENTS OF DECEASED RETIRED MEMBERS — FUNERAL BENEFIT — SPECIAL CONSULTANT, DUTY, COMPENSATION. — 1. Upon receipt of the proper proofs of death of a member in service for any reason whatever or of the death of a member after having been retired and pensioned, there shall be paid, in addition to all other benefits **but subject to subsection 7 of this section**, the following:

(1) If a member dies while in service, such member's surviving spouse, if any, shall be paid a base pension equal to forty percent of the final compensation of such member, subject to subsequent adjustments, if any, as provided in section 86.441;

(2) If a member retires or terminates service after August 28, 1999, and dies after commencement of benefits pursuant to the provisions of sections 86.370 to 86.497, the member's surviving spouse, if any, shall be paid a base pension equal to eighty percent of the pension being received by such member, including cost-of-living adjustments to such pension but excluding supplemental retirement benefits, at the time of such member's death, subject to subsequent adjustments, if any, as provided in section 86.441;

(3) If a member retired or terminated service on or before August 28, 1999, and died after August 28, 1999, and after commencement of benefits, such member's surviving spouse shall upon application to the retirement board, be appointed and employed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions and be available to give opinions in writing or orally in

response to such requests, as may be required. For such services, the surviving spouse shall, beginning the later of August 28, 1999, or the time of such appointment under this subsection, be compensated in such amount as shall make the benefits received by such surviving spouse pursuant to this subsection equal to eighty percent of the pension being received by such member, including cost-of-living adjustments to such pension but excluding supplemental retirement benefits, at the time of such member's death, subject to subsequent adjustments, if any, as provided in section 86.441;

(4) Upon the death of any member who is in service after August 28, 2000, and who either had at least twenty-five years of creditable service or was retired or died as a result of an injury or illness occurring in the line of duty or course of employment pursuant to section 86.450, the surviving spouse's benefit provided pursuant to this subsection, without including any supplemental retirement benefits paid such surviving spouse by this retirement system, shall not be less than six hundred dollars per month. For any member who dies, retires or terminates service on or before August 28, 2000, and who either had at least twenty-five years of creditable service or was retired or died as a result of an injury or illness occurring in the line of duty or course of employment pursuant to section 86.450, the surviving spouse shall upon application to the retirement board be appointed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions and be available to give opinions in writing or orally in response to such requests, as may be required. For such services, the surviving spouse shall, beginning the later of August 28, 2000, or the time the appointment is made pursuant to this subsection, be compensated in an amount which without including supplemental retirement benefits provided by this system shall be not less than six hundred dollars monthly. A pension benefit pursuant to this subdivision shall be paid in lieu of any base pension as increased by cost-of-living adjustments granted pursuant to section 86.441. The benefit pursuant to this subdivision shall not be subject to cost-of-living adjustments, but shall be terminated and replaced by the base pension and cost-of-living adjustments to which such spouse would otherwise be entitled at such time as the total base pension and such adjustments exceed six hundred dollars monthly;

(5) Such member's child or children under the age of eighteen years at the time of the member's decease shall be paid fifty dollars per month each, subject to adjustments, if any, as provided in section 86.441, until he or she shall attain the age of eighteen years; however, each such child who is or becomes a full-time student at an accredited educational institution shall continue to receive payments hereunder for so long as such child shall remain such a full-time student or shall be in a summer or other vacation period scheduled by the institution with intent by such child, demonstrated to the satisfaction of the retirement board, to return to such full-time student status upon the resumption of the institution's classes following such vacation period, but in no event shall such payments be continued after such child shall attain the age of twenty-one years except as hereinafter provided. Any child eighteen years of age or older, who is physically or mentally incapacitated from wage earning, so long as such incapacity exists as certified by a member of the medical board, shall be entitled to the same benefits as a child under the age of eighteen;

(6) A funeral benefit of one thousand dollars.

2. For the purposes of this section, "commencement of benefits" shall begin, for any benefit, at such time as all requirements have been met entitling the member to a payment of such benefit at the next following payment date, disregarding advance notice periods required by any paying agent for physical preparation of the payment, so that a member who dies between the date all such requirements are met and the date when the system would have delivered such member's initial payment shall be deemed to have commenced such benefit.

3. If there is no person qualified to receive a pension as a surviving spouse or if a surviving spouse dies, the total amount which would be received by a qualified surviving spouse or which is being received by the surviving spouse at the date of death of such surviving spouse shall be added to the amounts received by and shall be divided among the children under the age of

eighteen years and the incapacitated children in equal shares. As each child attains the age of eighteen years or has such incapacity removed, the total of the surviving spouse's pension shall then be added to and divided among the remaining children, and when there is only one child under the age of eighteen years or incapacitated, whether such child is the sole surviving child of the member or the youngest child of several children, the total amount of the surviving spouse's pension shall be paid to the child until such child reaches the age of eighteen years or such incapacity is removed.

4. (1) The surviving spouse of a member who retired or died prior to August 28, 1997, shall not be entitled to receive benefits or the payment of a pension pursuant to sections 86.370 to 86.497 unless marriage to the member occurred at least two years before the member's retirement or at least two years before the death of the member while in service; provided, that no benefits shall be denied pursuant to this subsection to the surviving spouse of a member whose death occurred in the line of duty or from an occupational disease arising out of and in the course of the member's employment.

(2) No surviving spouse of a member who retired or died while in service after August 28, 1997, and before August 28, 2000, shall be entitled to receive any benefits pursuant to this section unless such spouse was married to the member at the time of the member's retirement or death while in service.

(3) Any surviving spouse who would qualify for benefits pursuant to subdivision (1) or (2) of this subsection and who has not remarried prior to August 28, 2000, but remarries thereafter, shall upon application to the retirement board be appointed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions and be available to give opinions in writing or orally in response to such requests, as may be required. For such services, such surviving spouse shall be compensated in an amount equal to the benefits such spouse would have received pursuant to sections 86.370 to 86.497 in the absence of such remarriage.

(4) No surviving spouse of a member who retires or dies in service after August 28, 2000, shall be entitled to receive any benefits pursuant to sections 86.370 to 86.497 unless such spouse was married to the member at the time of the member's retirement or death in service. Any surviving spouse who was married to such a member at the time of the member's retirement or death in service shall be entitled to all benefits for surviving spouses pursuant to sections 86.370 to 86.497 for the life of such surviving spouse without regard to remarriage.

5. If no benefits are otherwise payable to a surviving spouse or child of a deceased member, the member's accumulated contributions, to any extent not fully paid to such member prior to the member's death or to the surviving spouse or child of such member, shall be paid in one lump sum to the member's named beneficiary or, if none, to the member's estate.

6. For purposes of this section, a determination of whether a child of a member is physically or mentally incapacitated from wage earning so that the child is entitled to benefits under this section shall be made at the time of the member's death. If a child becomes incapacitated after the member's death, or if a child's incapacity existing at the member's death is removed and such child later becomes incapacitated again, such child shall not be entitled to benefits as an incapacitated child under the provisions of this section. A child shall be deemed incapacitated only for so long as the incapacity existing at the time of the member's death continues.

7. Any beneficiary of benefits pursuant to sections 86.600 to 86.790 who becomes the surviving spouse of more than one member shall be paid all benefits due a surviving spouse of that member whose entitlements produce the largest surviving spouse benefits for such beneficiary but shall not be paid surviving spouse benefits as the surviving spouse of more than one member.

86.450. ACCIDENTAL DISABILITY PENSION — PERIODICAL EXAMINATIONS — EFFECT OF EARNINGS. — 1. Any member who is permanently unable to perform the full and unrestricted duties of a police officer as the natural, proximate and exclusive result of an accident

occurring within the actual performance of duty at some definite time and place or through an occupational disease arising exclusively out of and in the course of his or her employment shall be retired by the board of police commissioners upon certification by one or more physicians of the medical board of the retirement board that the member is mentally or physically unable to perform the full and unrestricted duties of a police officer, that the inability is permanent or likely to become permanent, and that the member should be retired. The inability to perform the full and unrestricted duties of a police officer means that the member is unable to perform all the essential job functions for the position of police officer as established by the board of police commissioners.

2. Upon such retirement, a member shall receive a pension equal to **[**sixty**]** **seventy-five** percent of his or her final compensation for so long as the permanent disability shall continue, during which time such member shall for purposes of this section be referred to as a disability beneficiary. Such pension may be subject to offset or reduction under section 86.460 by amounts paid or payable under any workers' compensation law.

3. Once each year during the first five years following his or her retirement, and at least once in every three-year period thereafter, the retirement board may, and upon the member's application shall, require any disability beneficiary who has not yet attained the age of sixty years, to undergo a medical examination at a place designated by the medical board or some member thereof. If any disability beneficiary who has not attained the age of sixty years refuses to submit to a medical examination his or her disability pension may be discontinued until his or her withdrawal of such refusal, and if his or her refusal continues for one year, all rights in and to such pension may be revoked by the retirement board.

4. If one or more members of the medical board certify to the retirement board that a disability beneficiary is able to perform the full and unrestricted duties of a police officer, and if the retirement board concurs on the report, then such beneficiary's disability pension shall cease.

5. If upon cessation of a disability pension pursuant to subsection 4 of this section, the former disability beneficiary is restored to active service, he or she shall again become a member, and he or she shall contribute thereafter at the same rate as other members. Upon his or her subsequent retirement, he or she shall be credited with all his or her service as a member, including any years in which such disability beneficiary received a disability pension pursuant to this section.

6. If upon cessation of a disability pension pursuant to subsection 4 of this section, the former disability beneficiary is not restored to active service, such former disability beneficiary shall be entitled to the retirement benefit to which such former disability beneficiary would have been entitled if such former disability beneficiary had terminated service for any reason other than dishonesty, intemperate habits or being convicted of a felony at the time of such cessation of such former disability beneficiary's disability pension. For the purpose of such retirement benefits, such former disability beneficiary will be credited with all the former disability beneficiary's service as a member, including any years in which the former disability beneficiary received a disability beneficiary pension under this section.

86.457. PENSION WHERE DISABILITY NOT EXCLUSIVELY CONNECTED WITH SERVICE — NONDUTY DISABILITY BENEFICIARY, PERIODIC EXAMINATIONS REQUIRED. — 1. Any member who has completed ten or more years of creditable service and who has become permanently unable to perform the full and unrestricted duties of a police officer as the result of an injury or illness not exclusively caused or induced by the actual performance of his or her official duties or by his or her own negligence, shall be retired by the board of police commissioners upon certification by one or more physicians of the medical board of the retirement board that the member is mentally or physically unable to perform the full and unrestricted duties of a police officer, that the incapacity is permanent or likely to become permanent and that the member should be retired. The inability to perform the full and unrestricted duties of a police officer means that the member is unable to perform all the essential

job functions for the position of police officer as established by the board of police commissioners.

2. Upon such retirement, a member shall receive a pension equal to two **and one-half** percent of his final compensation multiplied by the number of years of his creditable service. Such pension shall be paid for so long as the permanent disability shall continue, during which time such member shall for purposes of this section be referred to as a nonduty disability beneficiary.

3. Once each year during the first five years following such member's retirement, and at least once in every three-year period thereafter, the retirement board may, and upon the member's application shall, require any nonduty disability beneficiary who has not yet attained the age of sixty years, to undergo a medical examination at a place designated by the medical board or some member thereof. If any nonduty disability beneficiary who has not attained the age of sixty years refuses to submit to a medical examination his or her nonduty disability pension may be discontinued until his or her withdrawal of such refusal, and if his or her refusal continues for one year, all rights in and to such pension may be revoked by the retirement board.

4. If one or more members of the medical board certify to the retirement board that a nonduty disability beneficiary is able to perform the full and unrestricted duties of a police officer, and if the retirement board concurs on the report, then such beneficiary's nonduty disability pension shall cease.

86.463. PENSION AFTER TEN YEARS' SERVICE, TERMINATION OF SERVICE BY COMMISSIONERS — PENSION AFTER FIFTEEN YEARS' SERVICE ON RESIGNATION, HOW CALCULATED. — 1. Whenever the service of a member is not terminated by death or retirement, but by order of the board of police commissioners for any reason other than dishonesty, intemperate habits or being convicted of a felony, and the member has not less than ten years of creditable service, the member shall become entitled to an annual pension beginning at the age of sixty, if he **or she** is then living, bearing the same ratio to fifty percent of his **or her** final compensation, as defined in section 86.370, that the number of years of creditable service bears to thirty. When the member has less than ten years of creditable service, upon termination of service he **or she** shall be paid the amount of his **or her** accumulated contributions in one lump sum payment without interest, which shall constitute payment in full of all benefits to which he **or she** might be entitled under sections 86.370 to 86.497.

2. Whenever the service of a member is not terminated by death or retirement, but by voluntary resignation and the member has not less than fifteen years of creditable service, the member may elect not to withdraw his **or her** accumulated contributions and shall become entitled to an annual pension beginning at the age of fifty-five, if he **or she** is then living, equal to two **and one-half** percent of his **or her** final compensation multiplied by the number of years of his **or her** creditable service. When the member has less than fifteen years of creditable service, upon resignation from service he **or she** shall be paid the amount of his **or her** accumulated contributions in one lump sum payment without interest, which shall constitute payment in full of all benefits to which he **or she** might be entitled under sections 86.370 to 86.497.

86.483. INVESTMENT OF FUNDS, BOARD AUTHORIZED TO MANAGE, DESIGNATE DEPOSITORY — PROCEDURES. — 1. The retirement board shall act as trustee of the funds created by or collected pursuant to the provisions of sections 86.370 to 86.497. With appropriate safeguards against loss by the retirement system, the board may designate one or more banks or trust companies to serve as a depository of retirement system funds and intermediary in the investment of those funds and payment of system obligations. The board shall promptly deposit the funds with any such designated bank or trust company.

2. The retirement board shall have power, in the name and on behalf of the retirement pension system, to purchase, acquire, hold, invest, lend, lease, sell, assign, transfer and dispose

of all property, rights, and securities, and enter into written contracts, all as may be necessary or proper to carry out the purposes of sections 86.370 to 86.497. No investment transaction authorized by the retirement board shall be handled by any company or firm in which a member of the board has an interest, nor shall any member of the board profit directly or indirectly from any such investment. All investments shall be made for the account of the retirement system, and any securities or other properties obtained by the retirement board may be held by a custodian in the name of the retirement system, or in the name of a nominee in order to facilitate the expeditious transfer of such securities or other properties. Such securities or other properties may be held by such custodian in bearer form or in book entry form. The retirement system is further authorized to deposit, or have deposited for its account, eligible securities in a central depository system or clearing corporation or in a federal reserve bank under a book entry system as defined in the uniform commercial code, sections 400.8-102 and 400.8-109, RSMo. When such eligible securities of the retirement system are so deposited with the central depository system they may be merged and held in the name of the nominee of such securities depository and title to such securities may be transferred by bookkeeping entry on the books of such securities depository or federal reserve bank without physical delivery of the certificates or documents representing such securities.

3. The income from investments shall be credited **[**at least annually**]** to the funds of the retirement system **at frequent intervals satisfactory to the retirement board**. All payments from the funds shall be made by the bank or trust company only upon orders signed by the secretary and treasurer of the retirement board**, except as otherwise provided in this subsection**. No order shall be drawn unless it shall have previously been allowed by **a specific or an ongoing generalized** resolution of the retirement board. In the case of payments for **benefits,** services, supplies or similar items in the ordinary course of business, such board resolutions may be ongoing generalized authorizations, provided that each payment **other than payments to members or beneficiaries for benefits** shall be reported to the board at its next following meeting and shall be subject to ratification and approval by the board. All bonds or securities acquired and held by the retirement board shall be kept in a safe-deposit box, and access thereto shall be had only by the secretary and treasurer, jointly; except that, the retirement board may contract with a bank or trust company to act as the custodian of the bonds and securities, in which case the retirement board may authorize **[**its secretary and treasurer, jointly,**]** **such custodian bank or trust company** to order purchases, loans or sales of investments by such custodian bank or trust company**, and may also appoint one or more investment managers to manage investments of the retirement pension system and in the course of such management to order purchases, loans or sales of investments by such custodian bank or trust company, subject to such limitations, reporting requirements and other terms and restrictions as the retirement board may include in the terms of each such appointment**.

86.600. DEFINITIONS. — As used in sections 86.600 to 86.790, unless a different meaning is plainly required by the context, the following words and phrases mean:

(1) "Accumulated contributions", the sum of all amounts deducted from the compensation of a member and paid to the retirement board, together with all amounts paid to the retirement board by a member or by a member's beneficiary for the purchase of prior service credits or any other purpose permitted under sections 86.600 to 86.790 in all cases with interest thereon at a rate determined from time to time for such purpose by the retirement board;

(2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of the mortality tables and interest rate as shall be adopted by the retirement board;

(3) "Appointing authority", any person or group of persons having power by law to make appointments to any position in the police departments of the cities;

(4) "Beneficiary", any person receiving a benefit from the retirement system as a result of the death of a member;

(5) "Compensation", the basic wage or salary paid an employee for any period, excluding bonuses, overtime pay, expense allowance, and other extraordinary compensation;

(6) "Creditable service", the period of service to which an employee, a former employee, or a member is entitled, as prescribed by sections 86.600 to 86.790;

(7) "Employee", any regularly appointed civilian employee of the police departments of the cities as specified in sections 86.600 to 86.790, who is not eligible to receive a pension from the police pension system;

(8) "Employer", the police boards of the cities as specified in sections 86.600 to 86.790;

(9) "Final compensation", the average annual compensation of a member during his **or her** service if less than two years, or the twenty-four months of his **or her** service for which he **or she** received the highest salary whether consecutive or otherwise. In computing the average annual compensation of a member under this subsection, no compensation attributable to any time a member was suspended from service without pay shall be included**. For any period of time when a member is paid on a frequency other than monthly, the member's salary for such period shall be deemed to be the monthly equivalent of the member's annual rate of compensation for such period**;

(10) "Medical board", the board of physicians chosen by the retirement board;

(11) "Member", any member of the retirement system as provided by sections 86.600 to 86.790;

(12) "Normal retirement", retirement from the service of the employer on or after the normal retirement date;

(13) "Operative date", the date this retirement system becomes operative;

(14) "Pension", the annual payments for life which shall be payable in equal monthly installments to a member or his **or her** spouse;

(15) "Retirement board", the persons appointed or elected to be members of the retirement board for civilian employees of police departments of the cities;

(16) "Retirement system", the retirement system of the civilian employees of the cities as specified in sections 86.600 to 86.790;

(17) "Surviving spouse", the legally married wife or husband of a member surviving the member's death.

86.620. WHO SHALL BE MEMBERS — MEMBERSHIP VESTS, WHEN — TERMINATED EMPLOYEE WITH FIVE YEARS' SERVICE OPTION TO WITHDRAW CONTRIBUTION OR LEAVE IN FUND FOR PENSION — SPECIAL CONSULTANT, DUTY, COMPENSATION. — 1. **[**All civilian employees of the police departments of the cities specified herein**] Every person who becomes an employee, as defined in subdivision (7) of section 86.600, after August 28, 2001,** shall become **[**members**] a member** of the retirement system **[**on the first day of the month following completion of six months of continuous employment**] defined in sections 86.600 to 86.790** as a condition of **such** employment.

2. All civilian employees of such police departments who have completed six months of continuous employment as of August 13, 1990, but who have not theretofore been members of this retirement system because they were proscribed from participation by provisions of law in effect prior to such date, shall become members on that date.

3. Any employee described in subsection 2 of this section may establish creditable service for purposes of calculating such employee's pension under sections 86.600 to 86.790 for all years of such employee's employment by such police department, by paying as an employee contribution to the retirement system, on or before August 13, 1991, a single sum equal to the aggregate amount of contributions, without interest, which would have been deducted from such employee's compensation for all years pursuant to section 86.760 if such employee had not been proscribed from participation.

4. Except as provided in subsection 5 of this section, upon termination of employment prior to completion of five years of creditable service, an employee member shall be paid all of such

member's accumulated contributions to the fund, and such member's membership in the retirement system shall cease and such member shall forfeit all rights to any other benefits under the system arising from such member's service to date of termination.

5. A terminated employee member with five or more years of creditable service may choose to withdraw all of such member's accumulated contributions to the fund, in which case such member shall be paid upon demand the amount of such member's accumulated contributions in one lump payment and all provisions of subsection 4 of this section shall apply, or such terminated employee member may permit such member's contributions to remain in the fund until such member reaches such member's normal retirement date. Should a terminated member choose to withdraw his **or her** contributions, his **or her** membership in the retirement system shall cease, and he **or she** shall forfeit all rights to any other benefits under the system arising from his **or her** service to date of termination. The following shall apply to members described in this subsection:

(1) If such member retires after August 28, 1999, and allows such member's contributions to remain in the fund, such member shall be entitled to receive a pension upon such member's normal retirement date pursuant to section 86.650 or may elect to receive a pension commencing upon or after any date, prior to his **or her** normal retirement date, upon which early retirement would have been permitted pursuant to section 86.660 if such member had remained a civilian employee of such police department, except that in calculating any qualification pursuant to section 86.660, such member shall not be entitled to count any year of creditable service in excess of such member's total years of creditable service at the time of such member's termination of employment. The amount of any pension commenced upon the basis of a date permitted pursuant to section 86.660 shall be computed on the basis of the member's final compensation and number of years of creditable service, subject to such adjustments as may be applicable pursuant to section 86.660 upon which such member relies in electing the commencement of such member's pension;

(2) If such member retired on or before August 28, 1999, and allowed his **or her** contributions to remain in the fund, such member shall upon application to the retirement board be appointed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions and be available to give opinions in writing or orally in response to such requests, as may be required. For such services the member shall, beginning the later of August 28, 1999, or the time of such appointment pursuant to this subsection, be entitled to elect to receive compensation in such amount and commencing at such time as such member would have been entitled to elect pursuant to any of the provisions of section 86.660 if such member had terminated service after August 28, 1999. Such member shall be entitled to the same cost-of-living adjustments following the commencement of such compensation as if such member's compensation had been a pension.

86.671. OFFSETS TO WORKERS' COMPENSATION PAYMENTS — RULEMAKING AUTHORIZED — MEMBER'S PERCENTAGE DEFINED. — 1. Any period payment, excluding payments for medical treatment, which may be paid or payable by the cities pursuant to the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death shall be offset against any benefits payable to the recipient of the workers' compensation payments from funds provided by the cities pursuant to the provisions of sections 86.600 to 86.790 on account of the same disability or death. In no event, however, shall the amount paid from funds pursuant to the provisions of sections 86.600 to 86.790 be less than the amount which represents the member's percentage, as defined in subsection 4 of this section, of total benefits payable pursuant to sections 86.600 to 86.790, before any offset for workers' compensation benefits.

2. Any lump sum amount, excluding payments for medical treatments, which may be paid or payable by the cities pursuant to the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any disability or death shall be offset against any benefits payable from funds provided by the cities pursuant to the provisions of sections 86.600 to 86.790 on account of the same disability or death. The amounts by which each periodic payment made pursuant to the provisions of sections 86.600 to 86.790 is offset or reduced shall be computed as the periodic amount necessary to amortize as an annuity over the period of time represented by the respective workers' compensation benefits the total amount of the lump sum settlement received as a workers' compensation benefit by a beneficiary of the retirement system. Such computation shall be based upon the same interest rate and mortality assumptions as used for the retirement system at the time of such computation. In no event, however, shall the amount paid from funds pursuant to the provisions of sections 86.600 to 86.790 be less than the amount which represents the member's percentage, as defined in subsection 4 of this section, of total benefits payable pursuant to sections 86.600 to 86.790, before any offset for workers' compensation benefits.

3. The retirement board shall adopt such rules and regulations as may be necessary to effectuate the purposes of this section.

4. As used in this section, the term "member's percentage" shall be the fraction of which the numerator is the percentage of compensation contributed by a working member to the retirement pension system pursuant to section 86.760 during the pay period immediately preceding such member's death or disability which created entitlement to benefits and the denominator is the sum of percentages of a member's compensation contributed by a working member and the city pursuant to section 86.760 to the retirement pension system during such pay period. Such percentage shall identify the portion of any benefits due pursuant to the provisions of sections 86.600 to 86.790 which is deemed to have been provided by the member's own contributions.

86.675. COST-OF-LIVING ADJUSTMENT — TERMS DEFINED. — 1. Any member**, as defined in subsection 4 of this section,** who is entitled to a pension under sections 86.600 to 86.790 may receive, in addition to such member's base pension, a cost-of-living adjustment in an amount not to exceed three percent of such base pension during any one year, provided that the retirement system shall remain actuarially sound. The determination of whether the retirement system will remain actuarially sound shall be made at the time such cost-of-living adjustment is granted. If at any time the retirement system becomes actuarially unsound, pension payments shall continue as adjusted by increases theretofore granted. A member of the retirement board shall have no personal liability for granting increases under this subsection if that retirement board member in good faith relied and acted upon advice of a qualified actuary that the retirement system would remain actuarially sound.

2. The cost-of-living adjustment provided by this section shall be an increase or decrease computed on the base pension amount by the retirement board in an amount that the board, in its discretion, determines to be satisfactory, but in no event shall the adjustment be more than three percent or reduce the pension to an amount less than the base pension.

3. In determining and granting the cost-of-living adjustments provided by this section, the retirement board shall adopt such rules and regulations as may be necessary to effectuate the purposes of this section, including provisions for the manner of computation of such adjustments and the effective dates thereof. The retirement board shall provide for such adjustments to be determined once each year and granted on a date or dates to be chosen by the board, and may apply such adjustments in full to members who have retired during the year prior to such adjustments but who have not been retired for one full year.

4. As used in this section, the term "base pension" shall mean the pension computed under the provisions of the law as of the date of retirement of the member without regard to cost-of-living adjustment. As used in this section, the term "member" shall include:

(1) A surviving spouse **[**who has not remarried;**] without regard to remarriage; and**

(2) **[**Any children of a member who are entitled to receive part or all of the pension which would be received by a surviving spouse who had not remarried or died; and

(3) A surviving spouse (whether or not remarried)**] A surviving spouse, without regard to remarriage,** who is receiving an optional annuity pursuant to an election pursuant to subsection 2 of section 86.650.

5. If a member who has been retired and receiving a pension dies after August 28, 2001, the surviving spouse of such member entitled to receive a base pension pursuant to section 86.690 shall also receive a percentage cost-of-living adjustment to his or her respective base pension equal to the total percentage cost-of-living adjustments received during such member's lifetime pursuant to this section.

86.690. DEATH OF MEMBER PRIOR TO RETIREMENT, PAYMENTS MADE, HOW. — 1. Upon death **after August 28, 2001,** of a member for any cause prior to retirement, the following amounts shall be payable **subject to subsection 5 of this section,** as full and final settlement of any and all claims for benefits under this retirement system:

(1) If the member has less than five years of creditable service, the member's surviving spouse shall be paid, in a lump sum, the amount of accumulated contributions and interest. If there be no surviving spouse, payment shall be made to the member's designated beneficiary, or if none, to the executor or administrator of the member's estate.

(2) If the member has at least five, but less than twenty years of creditable service, the member's surviving spouse may elect, in lieu of the lump sum settlement in subdivision (1) of this subsection, an annuity. Such annuity shall be one-half of the member's accrued annuity at date of death as computed in section 86.650. The effective date of the election shall be the latter of the first day of the month after the member's death or attainment of what would have been the member's early retirement date as provided in section 86.660.

(3) If the member has at least twenty years of creditable service, the member's surviving spouse may elect, in lieu of the lump sum settlement in subdivision (1) of this subsection, the larger of the annuity as computed in subdivision (2) of this subsection or an annuity determined on a joint and survivor's basis from the actuarial value of the member's accrued annuity at date of death.

(4) Any death of a retired member occurring before the date of first payment of the retirement annuity shall be deemed to be a death before retirement.

(5) **[**Should a surviving spouse remarry, benefits from this retirement system shall cease as of the first day of the month following such remarriage**] Benefits payable pursuant to this section shall continue for the lifetime of such surviving spouse without regard to remarriage**.

(6) No surviving spouse of a member who dies in service after August 28, 2001, shall be entitled to receive any benefits pursuant to sections 86.600 to 86.790 unless such spouse was married to the member at the time of the member's death in service.

2. Upon death **following retirement for any cause after August 28, 2001,** of a member **[**following retirement for any cause**] who has not elected the optional annuity pursuant to section 86.650**, the member's surviving spouse shall receive a pension payable for life, **[**or until the first day of the month following remarriage,**]** equaling one-half of the member's normal retirement allowance, computed under section 86.650, as of the member's actual retirement date**, subject to adjustments provided in subsection 5 of section 86.675, if any; provided, no surviving spouse of a member who retires after August 28, 2001, shall be entitled to receive any benefits pursuant to sections 86.600 to 86.790 unless such spouse was married to the member at the time of the member's retirement. Any surviving spouse who was married to such a member at the time of the member's retirement shall be entitled to all benefits for surviving spouses pursuant to sections 86.600 to 86.790 for the life of such surviving spouse without regard to remarriage**. If there be no surviving spouse, payment of

the member's accumulated contributions less the amount of any prior payments from the retirement system to the member or to any beneficiary of the member shall be made to the member's designated beneficiary or, if none, to the personal representative of the member's estate.

3. **Any surviving spouse of a member who dies in service or retired prior to August 28, 2001, who otherwise qualify for benefits pursuant to subsection 1 or 2 of this section and who has not remarried prior to August 28, 2001, but remarries thereafter, shall upon application to the retirement board be appointed by the retirement board as a special consultant on the problems of retirement, aging and other matters, and upon request of the retirement board shall give opinions in writing or orally in response to such requests, as may be required. For such services, such surviving spouse shall be compensated in an amount equal to the benefits such spouse would have received pursuant to sections 86.600 to 86.790 in the absence of such remarriage.**

4. Should the total amount paid from the retirement system to a member, the member's surviving spouse and any other beneficiary of the member be less than the member's accumulated contributions, an amount equal to such difference shall be paid to the member's designated beneficiary or, if none, to the personal representative of the member's estate, and such payment shall constitute full and final payment of any and all claims for benefits under the retirement system.

5. Any beneficiary of benefits pursuant to sections 86.600 to 86.790 who becomes the surviving spouse of more than one member shall be paid all benefits due a surviving spouse of that member whose entitlements produce the largest surviving spouse benefits for such beneficiary but shall not be paid surviving spouse benefits as the surviving spouse of more than one member, except that any surviving spouse for whom an election has been made for an optional annuity under subsection 2 of section 86.650 shall be entitled to every annuity for which such surviving spouse has so contracted.

86.750. BOARD SHALL BE TRUSTEES OF FUNDS — POWERS AND DUTIES. — 1. The retirement board shall act as trustee of the funds created by or collected pursuant to the provisions of sections 86.600 to 86.790. With appropriate safeguards against loss by the retirement system, the board may designate one or more banks or trust companies to serve as a depository of retirement system funds and intermediary in the investment of those funds and payment of system obligations. The board shall promptly deposit the funds with any such designated bank or trust company.

2. The retirement board shall have power, in the name and on behalf of the retirement pension system, to purchase, acquire, hold, invest, lend, lease, sell, assign, transfer and dispose of all property, rights, and securities, and enter into written contracts, all as may be necessary or proper to carry out the provisions of sections 86.600 to 86.790. No investment transaction authorized by the retirement board shall be handled by any company or firm in which a member of the board has an interest, nor shall any member of the board profit directly or indirectly from any such investment. All investments shall be made for the account of the retirement system, and any securities or other properties obtained by the retirement board may be held by the custodian in the name of the retirement system, or in the name of the nominee in order to facilitate the expeditious transfer of such securities or other property. Such securities or other properties may be held by such custodian in bearer form or in book entry form. The retirement system is further authorized to deposit, or have deposited for its account, eligible securities in a central depository system or clearing corporation or in a federal reserve bank under a book entry system as defined in the uniform commercial code, sections 400.8-102 and 400.8-109, RSMo. When such eligible securities of the retirement system are so deposited with the central depository system they may be merged and held in the name of the nominee of such securities depository and title to such securities may be transferred by bookkeeping entry on the books of such securities depository or federal reserve bank without physical delivery of the certificates or documents representing such securities.

3. The income from investments shall be credited **[**at least annually**]** to the funds of the retirement system **at frequent intervals satisfactory to the retirement board**. All payments from the funds shall be made by the bank or trust company only upon orders signed by the secretary and treasurer of the retirement board**, except as otherwise provided in this section**. No order shall be drawn unless it shall have previously been allowed by **a specific or an ongoing generalized** resolution of the retirement board. In the case of payments for **benefits,** services, supplies or similar items in the ordinary course of business, such board resolutions may be ongoing generalized authorizations, provided that each payment **other than payments to members or beneficiaries for benefits** shall be reported to the board at its next following meeting and shall be subject to ratification and approval by the board. All bonds or securities acquired and held by the retirement board shall be kept in a safe-deposit box, and access thereto shall be had only by the secretary and treasurer, jointly; except that, the retirement board may contract with a bank or trust company to act as a custodian of the bonds and securities, in which case the retirement board may authorize **[**its secretary and treasurer, jointly,**]** **such custodian bank or trust company** to order purchases, loans or sales of investments by such custodian bank or trust company**, and may also appoint one or more investment managers to manage investments of the retirement pension system and in the course of such management to order purchases, loans or sales of investments by such custodian bank or trust company, subject to such limitations, reporting requirements and other terms and restrictions as the retirement board may include in the terms of each such appointment**.

86.780. FUND MONEYS EXEMPT FROM EXECUTION — NOT ASSIGNABLE, EXCEPT FOR SUPPORT OBLIGATIONS. — The **[**right of any person to a benefit accruing under the provisions of sections 86.600 to 86.790 and to the**]** moneys in the various funds created **[**under**]** **pursuant to** sections 86.600 to 86.790 **are hereby exempt from any tax of the state of Missouri or of any other municipality or political subdivision thereof. Neither such funds, nor the right of any person to a benefit accruing pursuant to the provisions of sections 86.600 to 86.790** shall **[**not**]** be subject to execution, garnishment, attachment, or to any other process whatsoever and the right shall be unassignable except as specifically provided in sections 86.600 to 86.790 and except for court orders or assignments approved by a court to provide support for family members or a former spouse of any person entitled to benefits under sections 86.600 to 86.790. A revocable request or authorization by a member or a beneficiary to withhold and apply for the requester's convenience some portion or all of a benefit payment, such as a request to apply some portion of a benefit payment to a medical insurance premium, shall not be deemed an assignment prohibited pursuant to this section provided that any such request shall remain revocable at all times except as to payments or withholdings effected prior to any such revocation. The retirement system may, but shall not be obligated to, comply with any such request.

87.120. DEFINITIONS. — The following words and phrases as used in sections 87.120 to 87.370, unless a different meaning is plainly required by the context, have the following meanings:

(1) "Accumulated contributions", the sum of all amounts deducted from the compensation of a member and credited to his **or her** individual account in the members' savings fund together with interest thereon;

(2) "Actuarial equivalent", a benefit of equal value when computed upon the basis of such mortality tables and interest rate as shall be adopted by the board of trustees;

(3) "Average final compensation", the average earnable compensation of the member during his **or her** last two years of service as a **[**fireman**] firefighter**, or if **[**he**] the firefighter** has less than two years of service, then the average earnable compensation of his **or her** entire period of service;

(4) "Beneficiary", any person in receipt of a retirement allowance or other benefit as provided by sections 87.120 to 87.370;

(5) "Benefit reserve", the present value of all payments to be made on account of any retirement allowance or benefit in lieu of a retirement allowance upon the basis of such mortality tables and interest rate as shall be adopted by the board of trustees;

(6) "Board of trustees", the board provided for in section 87.140 to administer the retirement system;

(7) "City", any city not within a county and adopting the retirement system provided by sections 87.120 to 87.370;

(8) "Creditable service", prior service plus membership service as provided in section 87.135;

(9) "DROP", the deferred retirement option plan provided in section 87.182;

(10) "Earnable compensation", the regular compensation which a member would earn during one year on the basis of the stated compensation for his **or her** rank or position;

(11) "**[**Fireman**] Firefighter**", any officer or employee of the fire department of the city employed by the city for the duty of fighting fires, but does not include anyone employed in a clerical or other capacity not involving fire- fighting duties. In case of doubt as to whether any person is a **[**fireman**] firefighter** within the meaning of sections 87.120 to 87.370, the decision of the board of trustees shall be final;

(12) "Medical board", the board of physicians provided for in section 87.160;

(13) "Member", a member of the retirement system as defined by section 87.130;

(14) "Membership service", service as a **[**fireman**] firefighter** rendered since last becoming a member;

(15) "Prior service", all service as a **[**fireman**] firefighter** rendered prior to the date the system becomes operative which is creditable in accordance with the provisions of section 87.135;

(16) "Retirement allowance", annual payments for life which shall be payable in equal monthly installments or any benefits in lieu thereof granted to a member upon retirement or to a beneficiary;

(17) "Retirement system", the **[**firemen's**] firefighter's** retirement system of any city as defined in section 87.125**[**;

(18) "Widow", the surviving spouse of a member**]**.

87.130. MEMBERSHIP REQUIREMENTS. — 1. All persons who are **[**firemen**] firefighters** shall be members as a condition of their employment and shall receive no pension or retirement allowance from any other pension or retirement system supported wholly or in part by the city or the state of Missouri because of years of service for which they are entitled to benefits under this system nor shall they be required to make contributions under any other pension or retirement system of the city or the state of Missouri, anything to the contrary notwithstanding.

2. If any member, in any period of five consecutive years after last becoming a member, is absent from service for more than four years unless the member has twenty years or more of creditable service, or if any member withdraws the member's accumulated contributions, or if any member becomes a beneficiary, the person shall thereupon cease to be a member; except in the case of a member who has served in the armed forces of the United States or retired pursuant to section 87.170 and is subsequently reinstated as a **[**fireman**] firefighter** or as a member in beneficiary status as a **[**widow**] surviving spouse**.

3. Any member who is reinstated after retiring pursuant to conditions in section 87.170 shall not be eligible to participate in the benefit provided pursuant to section 87.182.

87.135. MEMBERS SHALL FILE DETAILED ACCOUNT OF SERVICE — VERIFICATION OF SERVICE AND ISSUANCE OF SERVICE CERTIFICATE. — 1. Under such rules and regulations as the board of trustees shall adopt, each member who was a **[**fireman**] firefighter** on and prior to the date of the establishment of the retirement system shall file a detailed statement of all service

as a **[**fireman**] firefighter** rendered by him **or her** prior to that date for which **[**he**] the firefighter** claims credit.

2. The board of trustees shall fix and determine by proper rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year, nor shall the board of trustees allow credit as service for any period of more than one month's duration during which the member was absent without pay.

3. Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify the service claims as soon as practicable after the filing of the statement of service.

4. Upon verification of the statements of service the board of trustees shall issue prior service certificates, certifying to each member the length of prior service with which **[**he**] the member** is credited on the basis of his **or her** statement of service. So long as the holder of the certificate continues to be a member, a prior service certificate shall be final and conclusive for retirement purposes as to such service, except that any member may, within one year from the date of issuance or modification of the certificate, request the board of trustees to modify or correct **[**his**] the member's** prior service certificate, and upon such request or of its own motion the board may correct the certificate. When any **[**fireman**] firefighter** ceases to be a member his **or her** prior service certificate shall become void. Should he **or she** again become a member, he **or she** shall enter the retirement system as a member not entitled to prior service credit except as provided in section 87.215.

5. Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of creditable membership service rendered by him **or her**, and also if **[**he**] the member** has a prior service certificate which is in full force and effect, the amount of the service certified on **[**his**] the member's** prior service certificate. Service rendered by a **[**fireman**] firefighter** after the operative date and prior to becoming a member shall be included as creditable membership service provided the service was rendered since he **or she** last became a **[**fireman**] firefighter**.

87.170. CONDITIONS OF RETIREMENT. — Retirement of a member on a service retirement allowance shall be made by the board of trustees as follows:

(1) Any member may retire upon the member's written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing therefor, the member desires to be retired, if the member at the time so specified for such member's retirement has twenty-five years or more of service; except that a member who ceases to be a **[**fireman**] firefighter** after twenty years or more of service may retire prior to the twenty-five years of service with a retirement allowance based on the member's years of service;

(2) Any member in service upon attaining the age of sixty, if qualifying for a service retirement allowance equal to seventy-five percent of the average final compensation, shall be retired forthwith; except that with respect to any member, the board shall not retire such member when the member attains sixty years of age or more merely because the member has attained that age unless the member so requests or the member has completed thirty or more years of service, even if a portion of such service is not creditable service pursuant to participation in the deferred retirement option plan prescribed by section 87.182;

(3) Any member who qualifies for a service retirement allowance of seventy-five percent or over and has not attained sixty years of age may be retained as a member until sixty years of age, with no increase in retirement allowance.

87.185. MILITARY SERVICE DURING WAR CREDITED. — If, at any time since first becoming a member of the retirement system, a member has served in the armed forces of the United States, in any war or period of armed hostilities between the armed forces of the United

States and those of a foreign power, and is subsequently reinstated as a **[**fireman**] firefighter** within ninety days after his **or her** discharge, **[**he**] the member** shall be granted credit for such service as if his **or her** service in the fire department of the city had not been interrupted by his **or her** induction into the armed forces of the United States, and as if **[**he**] the member** had made the required contributions during such service. If earnable compensation is needed for such period in computation of benefits it shall be calculated on the basis of the compensation payable to the officers of his **or her** rank during the period of his **or her** absence.

87.205. ACCIDENTAL DISABILITY RETIREMENT ALLOWANCE. — 1. Upon retirement for accidental disability, a member shall receive seventy-five percent of the pay then provided by law for the highest step in the range of salary for the title or rank held by such member at the time of such retirement unless the member is permanently and totally incapacitated from performing any work, occupation or vocation of any kind whatsoever and is continuously confined to the member's home except for visits to obtain medical treatment, in which event the member may receive, in the discretion of the board of trustees, a retirement allowance in an amount not exceeding the member's rate of compensation as a **[**fireman**] firefighter** in effect as of the date the allowance begins.

2. Anyone who has retired pursuant to the provisions of section 87.170 and has been reinstated pursuant to subsection 2 of section 87.130 who subsequently becomes disabled, as provided in section 87.200, shall receive a total benefit which is the higher of either the disability pension or the service pension.

87.215. REDUCTION AND SUSPENSION OF PENSION, WHEN. — 1. If the medical board reports and certifies to the board of trustees that the disability beneficiary is engaged or is able to engage in a gainful occupation other than **[**fireman**] firefighter** paying more than the difference between his **or her** retirement allowance and one and one-half times the then current rate of pay for the rank held by the member at the time of retirement, and if the board of trustees concurs in the report, then the amount of his **or her** retirement allowance shall be reduced to an amount which together with the amount earnable by him **or her** in such other occupation shall equal the amount of such current rate of pay. If his **or her** earning capacity is later changed, the amount of his **or her** retirement may be further modified. If any such disability beneficiary is found by such medical board to be able to engage in the occupation of **[**fireman**] firefighter**, his **or her** retirement allowance shall not cease until he **or she** is restored to active service at the position and title held by such disability beneficiary at the time such disability occurred.

2. If a disability beneficiary is restored to active service, his **or her** retirement allowance shall cease and he **or she** shall again become a member. His **or her** creditable service at the time of his **or her** retirement shall be restored to full force and effect and in addition, upon his **or her** subsequent retirement, he **or she** shall be credited with all his **or her** additional service as a member, and if his **or her** then average final compensation is less than the average final compensation used in determining his **or her** disability benefits, the latter amount shall be used in determining benefits. In addition, an accident disabled member restored to active service shall be credited with all the time he **or she** has served as a beneficiary.

87.237. RETIREE TO BECOME SPECIAL ADVISOR, WHEN, COMPENSATION. — 1. Any person who served as a **[**fireman**] firefighter** and who is retired and receiving a retirement allowance of less than one hundred percent of the federal poverty level for a single person as set and updated by the United States Department of Health and Human Services or its successor agency may act as a special advisor to the retirement system.

2. For the additional service as a special advisor, each retired person shall receive, in addition to the retirement allowance provided **[**under**] pursuant to** this chapter, an additional amount, which amount, together with the retirement allowance he **or she** is receiving **[**under**]**

pursuant to other provisions of this chapter, shall equal, but not exceed, one hundred percent of the federal poverty level for a single person as set and updated by the United States Department of Health and Human Services or its successor agency. Any retirement allowance paid to a retiree **[**under**] pursuant to** this subsection shall be withdrawn from the **[**firemen's**] firefighters'** retirement and relief system fund and no moneys shall be withdrawn from the general revenue fund of any city not within a county.

87.240. ACCUMULATED CONTRIBUTIONS TO BE REFUNDED, WHEN. — If a member ceases to be a **[**fireman**] firefighter** except by death or retirement, **[**he**] the firefighter** shall be paid on demand the amount of his **or her** accumulated contributions standing to the credit of his **or her** individual account in the members' savings fund, and such a member who has left his **or her** contributions with the system may later withdraw his **or her** accumulated contributions at any time prior to the beginning of his **or her** retirement benefits.

87.288. RETIRED FIREFIGHTER NOT RECEIVING COST-OF-LIVING BENEFIT, SPECIAL CONSULTANT — COMPENSATION, AMOUNT. — 1. Any person who served as a **[**fireman**] firefighter** who is retired and not receiving a cost-of-living benefit and any **[**widow**] surviving spouse** or dependent child receiving retirement benefits, but not receiving a cost-of-living benefit shall be made, constituted, and appointed as a special consultant on the problems of retirement, aging, and other state matters, and be available to give opinion in writing or orally, in response to such requests as may be required and for such services shall be compensated annually in accordance with the provisions of subsection 2 of this section.

2. Effective September 1, 1996, and annually thereafter, one-half of the annual interest earned in the future benefits fund created **[**under**] pursuant to** section 87.287 shall be appropriated to provide an ad hoc COLA administered by the board of trustees and from September 1, 2016, and annually thereafter three-fourths of the annual interest earned in the future benefits fund created **[**under**] pursuant to** section 87.287 shall be appropriated to provide an ad hoc COLA administered by the board of trustees based upon the formula in this subsection. The distributable amount shall be divided by the number of retirees and surviving spouses and dependent children eligible to receive the ad hoc COLA **[**under**] pursuant to** this provision calculated and distributed based upon the following years of service:

(1) Members retiring with thirty or more years of service shall receive a full share of the distributable amount;

(2) Members retiring with twenty-five or more years of service but less than thirty years shall receive a three-quarter share of the distributable amount;

(3) Members retiring with less than twenty-five years shall receive a one-half share of the distributable amount;

(4) Surviving spouses and dependent children shall receive one-half of the ad hoc COLA the member would have been entitled to receive.

87.310. REPAYMENT WITH INTEREST OF CONTRIBUTIONS WITHDRAWN ON REINSTATEMENT OF MEMBER. — When any member terminates his **or her** employment as a **[**fireman**] firefighter** and withdraws his **or her** accumulated contributions from the retirement system, he **or she** ceases to be a member of the retirement system. If he **or she** is reinstated as a **[**fireman he**] firefighter he or she** will again become a member of the retirement system as a new member with no creditable service prior to his **or her** termination. However, any member currently employed as a **[**fireman**] firefighter** may repay the retirement system his **or her** total accumulated contribution withdrawn at the time of his **or her** termination and an amount of interest on such contribution at the same rate per annum as allowed in the member's savings account in the same period. Such repayment shall occur within two years after August 13, 1984, and when made the member shall then receive full credit for service prior to the date of his **or her** termination.

87.371. UNUSED SICK LEAVE, HOW CREDITED. — 1. Any member retiring pursuant to the provisions of sections 87.120 to 87.370, after working continuously for an entity covered by sections 87.120 to 87.370, until reaching retirement age, but not including retirement for service-connected disability, shall be credited with all of the member's unused sick leave as certified by the member's employing entity.

2. No member working on or after **[**June 1, 1999**] July 1, 2000**, shall be credited with sick leave at a rate less than **or more than** the rate being earned on **[**June 1, 1999**] July 1, 2000**, nor shall any cap or limit applied to accumulated sick leave after **[**June 1, 1999**] July 1, 2000**, be construed as a limit on the number of sick days actually earned without reference to the cap or limit which may be credited pursuant to the provisions of this section. When calculating years of service, each member shall be entitled to one day of creditable service for each day of unused accumulated sick leave earned by the member.

3. Accumulated sick leave shall allow a member to vest in the retirement system by using such credited sick leave to reach the time of vesting and shall also allow a member to exceed a seventy-five percent service retirement allowance by adding accumulated sick leave to no more than thirty years of creditable service or a member who is participating in the DROP program established in section 87.182 may elect upon retirement to have placed in his or her DROP account a dollar amount equal to his or her accumulated number of sick leave hours multiplied by his or her hourly rate of pay at the time of retirement**, or to place one-half of this dollar amount in the member's DROP account, to have one-fourth of this dollar amount added to the member's average final compensation, and to have the remaining one-fourth of this dollar amount remain as time and added to the member's creditable service**.

87.615. RETIRED FIREMEN OR THEIR BENEFICIARIES NOT COVERED BY RETIREMENT SYSTEM MAY BE EMPLOYED BY CERTAIN CITIES AS CONSULTANTS, DUTIES, COMPENSATION (ST. JOSEPH). — 1. Any firefighter who has retired or who retires and was not or is not a member of the retirement system governed by sections 70.600 to 70.755, RSMo, and any beneficiary of any such firefighter shall, upon application to any city with a population of at least seventy thousand located in a county of the first classification without a charter form of government, be made, constitutionally appointed, and employed by the city as a special consultant on the problems of retirement and upon request of the city council, shall give opinions and be available to give opinions in writing or orally in response to requests of the city council. As compensation for the services required by this section, the city may directly compensate the retired firefighter or beneficiary thereof in an amount established by ordinance of the city. Such amount of additional compensation may be paid directly by the city to each qualified retiree or beneficiary and shall not be considered employer contributions to the local government retirement system nor benefits paid therefrom.

2. Notwithstanding any other law to the contrary, beginning August 29, 2001, any beneficiary of a firefighter who had retired or who retires and was not or is not a member of the retirement system governed by sections 70.600 to 70.755, RSMo, shall upon application to any city with a population of at least seventy thousand located in a county of the first classification without a charter form of government, be made, constitutionally appointed, and employed by the city as a special consultant on the problems of retirement and upon request of the city council, shall give opinions and be available to give opinions in writing or orally in response to request of the city council. As compensation for the services required by this section, the city may directly compensate the beneficiary thereof by continuing the death benefit payment upon remarriage of the beneficiary. Such amount of compensation may be paid directly by the city to each qualifying special consultant and shall not be considered employer contributions to the local government employees retirement system nor benefits paid therefrom.

SECTION 1. CONTACT INFORMATION FOR RETIRED MEMBERS TO BE PROVIDED, WHEN (ST. LOUIS CITY). — Notwithstanding the provisions of sections 610.010 to 610.035, RSMo, to the contrary, any retirement plan as defined in section 105.660, RSMo, located in a city not within a county, providing retirement benefits for general employees shall provide, upon request by any retiree organization, sufficient information enabling such organization to contact retired members.

Approved July 12, 2001

SB 295 [SB 295]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Revises uses of capital funds for public community colleges.

AN ACT to repeal section 163.191, RSMo 2000, relating to allowable costs for state aid to community colleges, and to enact in lieu thereof one new section relating to the same subject.

SECTION

A. Enacting clause.

163.191. State aid to community colleges — distribution to be based on resource allocation model, adjustment annually, factors involved — report on effectiveness of model, due when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 163.191, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 163.191, to read as follows:

163.191. STATE AID TO COMMUNITY COLLEGES — DISTRIBUTION TO BE BASED ON RESOURCE ALLOCATION MODEL, ADJUSTMENT ANNUALLY, FACTORS INVOLVED — REPORT ON EFFECTIVENESS OF MODEL, DUE WHEN. — 1. Each year public community colleges in the aggregate shall be eligible to receive from state funds, if state funds are available and appropriated, an amount up to but not more than fifty percent of the state community colleges' planned operating costs as determined by the department of higher education. As used in this subsection, the term "year" means from July first to June thirtieth of the following year. As used in this subsection, the term "operating costs" means all costs attributable to current operations, including all direct costs of instruction, instructors' and counselors' compensation, administrative costs, all normal operating costs and all similar noncapital expenditures during any year, excluding costs of construction of facilities and the purchase of equipment, furniture, and other capital items authorized and funded in accordance with subsection 2 of this section. Operating costs shall be computed in accordance with accounting methods and procedures to be specified by the department of higher education. The department of higher education shall review all institutional budget requests and prepare appropriation recommendations annually for the community colleges under the supervision of the department. The department's budget request shall include a recommended level of funding. Distribution of appropriated funds to community college districts shall be in accordance with the community college resource allocation model. This model shall be developed and revised as appropriate cooperatively by the community colleges and the department of higher education. The department of higher education shall recommend the model to the coordinating board for higher education for their approval. The

core funding level for each community college shall initially be established at an amount agreed upon by the community colleges and the department of higher education. This amount will be adjusted annually for inflation, limited growth, and program improvements in accordance with the resource allocation model starting with fiscal year 1993. The department of higher education shall request new and separate state aid funds for any new districts for their first six years of operation. The request for the new districts shall be based upon the same level of funding being provided to the existing districts, and should be sufficient to provide for the growth required to reach a mature enrollment level. The department of higher education will be responsible for evaluating the effectiveness of the resource allocation model and will submit a report to the speaker of the house of representatives and president pro tem of the senate by November 1997, and every four years thereafter.

2. In addition to state funds received for operating purposes, each community college district shall be eligible to receive an annual appropriation for the cost of maintenance and repair of facilities and grounds, **including surface parking areas,** and purchases of equipment and furniture. Such funds shall not exceed in any year an amount equal to ten percent of the state appropriations to community college districts for operating purposes during the most recently completed fiscal year. The department of higher education may include in its annual appropriations request the necessary funds to implement the provisions of this subsection and when appropriated shall distribute the funds to each community college district as appropriated. The department of higher education appropriations request shall be for specific maintenance, repair, and equipment projects at specific community college districts, shall be in an amount of fifty percent of the cost of a given project as determined by the coordinating board and shall be only for projects which have been approved by the coordinating board through a process of application, evaluation and approval as established by the coordinating board. The coordinating board, as part of its process of application, evaluation, and approval, shall require the community college district to provide proof that the fifty-percent share of funding to be defrayed by the district is either on hand or committed for maintenance, repair, and equipment projects. Only salaries or portions of salaries paid which are directly related to approved projects may be used as a part of the fifty-percent share of funding.

3. School districts offering two-year college courses pursuant to section 178.370, RSMo, on October 31, 1961, shall receive state aid pursuant to subsections 1 and 2 of this section if all scholastic standards established pursuant to sections 178.770 to 178.890, RSMo, are met.

4. In order to make postsecondary educational opportunities available to Missouri residents who do not reside in an existing community college district, community colleges organized pursuant to section 178.370, RSMo, or sections 178.770 to 178.890, RSMo, shall be authorized pursuant to the funding provisions of this section to offer courses and programs outside the community college district with prior approval by the coordinating board for higher education. The classes conducted outside the district shall be self-sustaining except that the coordinating board shall promulgate rules to reimburse selected out-of-district instruction only where prior need has been established in geographical areas designated by the coordinating board for higher education. Funding for such off-campus instruction shall be included in the appropriation recommendations, shall be determined by the general assembly and shall continue, within the amounts appropriated therefor, unless the general assembly disapproves the action by concurrent resolution.

5. A "community college" is an institution of higher education deriving financial resources from local, state, and federal sources, and providing postsecondary education primarily for persons above the twelfth grade age level, including courses in:

(1) Liberal arts and sciences, including general education;

(2) Occupational, vocational-technical; and

(3) A variety of educational community services.

Community college course offerings lead to the granting of certificates, diplomas, and/or associate degrees, but do not include baccalaureate or higher degrees.

6. When distributing state aid authorized for community colleges, the state treasurer may, in any year if requested by a community college, disregard the provision in section 30.180, RSMo, requiring the state treasurer to convert the warrant requesting payment into a check or draft and wire transfer the amount to be distributed to the community college directly to the community college's account.

Approved June 8, 2001

SB 301 [SCS SB 301]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows Missouri Western to convey property to the University of Missouri.

AN ACT to authorize the conveyance of property owned by Missouri Western State College to the University of Missouri Extension Council of Buchanan County for use as an extension office.

SECTION

1. Conveyance of property by Missouri Western State College to the University of Missouri Extension Council of Buchanan County.
2. Consideration for conveyance — instrument of conveyance, conditions.
3. Attorney general to approve form of conveyance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. CONVEYANCE OF PROPERTY BY MISSOURI WESTERN STATE COLLEGE TO THE UNIVERSITY OF MISSOURI EXTENSION COUNCIL OF BUCHANAN COUNTY. — The board of governors of Missouri Western State College is hereby authorized to convey by warranty deed or other appropriate instrument, as the board determines appropriate, its right, title and interest in the real estate to the University of Missouri Extension Council of Buchanan County, a tract of approximately three and one-half acres out of the following described real estate and interest in real estate in the County of Buchanan, State of Missouri, to wit:
A parcel of land located in Section 14, Township 57, Range 35N which is the northeast one-fourth of Section 14 lying west of Interstate 29.
The exact legal description shall be determined by survey and shall be approved by the board of regents of Missouri Western State College.

SECTION 2. CONSIDERATION FOR CONVEYANCE — INSTRUMENT OF CONVEYANCE, CONDITIONS. — Consideration for the conveyance shall be as negotiated by the parties. The instrument of conveyance shall reserve a reversionary interest in the Missouri Western State College if the University of Missouri Extension Council of Buchanan County ceases to use the property described in section 1 of this act. In addition, the instrument of the conveyance shall contain such other restrictions, reversionary clauses, and conditions as are deemed necessary by the board of regents of Missouri Western State College to protect the interest of the college or the state.

SECTION 3. ATTORNEY GENERAL TO APPROVE FORM OF CONVEYANCE. — The attorney general shall approve as to form the instrument of conveyance.

Approved July 10, 2001

SB 303 [SB 303]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows school districts to directly enter into lease purchases with vendors.

AN ACT to amend chapter 177, RSMo, by adding thereto one new section relating to school lease purchases.

SECTION
A. Enacting clause.
177.082. Lease purchase agreements permitted, when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 177, RSMo, is amended by adding thereto one new section, to be known as section 177.082, to read as follows:

177.082. LEASE PURCHASE AGREEMENTS PERMITTED, WHEN. — The school board may purchase apparatus, equipment and furnishings for its schools and operations by entering into lease purchase agreements with vendors. Any agreement which may result in school district ownership of the leased object must contain a provision which allows the district an option to terminate the agreement on at least an annual basis without penalty. All expenditures related to lease purchase agreements shall be considered expenditures for capital outlay and shall be made pursuant to the provisions of section 165.011, RSMo.

Approved July 10, 2001

SB 316 [SB 316]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Requires school retirement systems to promulgate joint rules.

AN ACT to amend chapter 169, RSMo, by adding thereto one new section relating to certain school retirement systems.

SECTION
A. Enacting clause.
169.569. Joint rules promulgated, procedure.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 169, RSMo, is amended by adding thereto one new section, to be known as section 169.569, to read as follows:

169.569. JOINT RULES PROMULGATED, PROCEDURE. — 1. In accordance with the recommendations made pursuant to section 169.566, the public school retirement system of Missouri, the public school retirement system of the Kansas City school district, the

public school retirement system of the St. Louis city school district and the nonteacher school employee retirement system of Missouri created pursuant to this chapter shall promulgate joint rules, which shall provide for the recognition of service toward retirement eligibility rendered by certified and noncertified personnel under any of the four systems. Such rules shall be limited to creditable service established with each system and shall in no event permit any transfer of creditable service or system assets.

2. Rules required pursuant to subsection 1 of this section shall be approved, and may be amended, by a majority of all of the trustees of each board of the four retirement systems. At least thirty days prior to the meeting of any board of one of the four retirement systems to vote on approving or amending such rules, a copy of the proposed rules or amendments shall be filed with the joint committee on public employee retirement.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

Approved July 10, 2001

SB 317 [SCS SB 317]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Exempts used manufactured homes and certain used modular units from complying with manufactured housing codes.

AN ACT to repeal sections 700.015, 700.025, 700.045, 700.050, 700.090 and 700.100, RSMo 2000, relating to housing, and to enact in lieu thereof fourteen new sections relating to the same subject, with penalty provisions.

SECTION

A. Enacting clause.
324.700. Definitions.
324.703. License required for persons engaged in the business of housemoving.
324.706. License issued, when.
324.709. Effective date of license — annual renewal.
324.712. Certificate of insurance required — notification to division, when.
324.715. Special permit required, issued when — license not required, when.
324.742. Violations, penalty.
324.745. Severability clause — applicability exceptions.
700.015. Code compliance required, when — seal required — exemptions from code requirements for sale of new recreational vehicles and park trailers.
700.025. Alteration of unit with seal, prohibited when.
700.045. Certain acts declared misdemeanors.
700.050. Issuance of seals to manufacturer suspended, when — removal of attached seal, when.
700.090. Manufacturers and dealers to register — commission to issue certificate, when — registration to be renewed, when, fee — renewals may be staggered.
700.100. Refusal to renew, grounds, notification to applicant, contents — complaints may be considered.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 700.015, 700.025, 700.045, 700.050, 700.090 and 700.100, RSMo 2000, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 324.700, 324.703, 324.706, 324.709, 324.712, 324.715, 324.742, 324.745, 700.015, 700.025, 700.045, 700.050, 700.090 and 700.100, to read as follows:

324.700. DEFINITIONS. — As used in sections 324.700 to 324.745, unless the context provides otherwise, the following terms shall mean:

(1) "Division", the division of motor carrier and railroad safety;

(2) "House", a dwelling or other structure intended for human habitat in excess of fourteen feet in width. A house does not include a manufactured home as defined in section 700.010, RSMo, or a modular unit;

(3) "Housemover", a person actively engaged on a full-time basis in the intrastate movement of houses on public roads and highways of this state;

(4) "Housemoving", engaging actively and directly on a full-time basis in the intrastate movement of houses on public roads and highways of this state;

(5) "Person", an individual, corporation, partnership, association or any other business entity.

324.703. LICENSE REQUIRED FOR PERSONS ENGAGED IN THE BUSINESS OF HOUSEMOVING. — All persons who engage in the business of housemoving on the roads and highways of this state shall be licensed by the division of motor carrier and railroad safety.

324.706. LICENSE ISSUED, WHEN. — The division shall issue licenses to applicants meeting the following conditions:

(1) The applicant must be at least eighteen years of age, possess a valid commercial driver's license and have at least twenty-four months experience in moving houses;

(2) The applicant must furnish proof that all of the vehicles to be used in the movement of houses have met the requirements of sections 307.350 to 307.400, RSMo, or its equivalent pertaining to the inspection of motor vehicles;

(3) The applicant must exhibit his federal employer's identification number; and

(4) The applicant must pay an annual license fee of one hundred dollars. All moneys received for housemover licenses shall be paid to and collected by the division of motor carrier and railroad safety and transmitted to the director of revenue and deposited in the state treasury to the credit of the state highways and transportation fund as established in section 226.200, RSMo.

324.709. EFFECTIVE DATE OF LICENSE — ANNUAL RENEWAL. — A license issued pursuant to sections 324.700 to 327.742 shall be effective for a period of one year from the date of issuance and shall be renewable on an annual basis.

324.712. CERTIFICATE OF INSURANCE REQUIRED — NOTIFICATION TO DIVISION, WHEN. — 1. No license shall be issued or renewed unless the applicant files with the division a certificate or certificates of insurance from an insurance company or companies authorized to do business in this state. The applicant must demonstrate that he or she has:

(1) Motor vehicle insurance for bodily injury to or death of one or more persons in any one accident and for injury or destruction of property of others in any one accident with minimum amount of coverage established by the division by rule;

(2) Comprehensive general liability insurance with a minimum level of coverage established by the division by rule, including coverage of operations on state streets and highways that are not covered by motor vehicle insurance; and

(3) Workers' compensation insurance that complies with chapter 287, RSMo, for all employees.

2. The certificate or certificates shall provide for continuous coverage during the effective period of the license issued pursuant to this section. At the time the certificate is filed, the applicant shall also file with the division a current list of all motor vehicles covered by the certificate. The applicant shall file amendments to the list within fifteen days of any changes.

3. An insurance company issuing any insurance policy required by this section shall notify the division of any of the following events at least thirty days before its occurrence:

(1) Cancellation of the policy;

(2) Nonrenewal of the policy by the company; or

(3) Any change in the policy.

4. In addition to all coverages required by this section, the applicant shall file with the division a copy of either:

(1) A bond or other acceptable surety providing coverage in the amount of fifty thousand dollars for the benefit of a person contracting with the housemover to move that person's house for all claims for property damage arising from the movement of a house; or

(2) A policy of cargo insurance in the amount of one hundred thousand dollars.

324.715. SPECIAL PERMIT REQUIRED, ISSUED WHEN — LICENSE NOT REQUIRED, WHEN. — 1. Persons licensed as housemovers shall also be required to secure a special permit, as provided for pursuant to section 304.200, RSMo, from the chief engineer of the department of highways and transportation for every move undertaken on the state highway system.

2. A license shall not be required for individuals moving their own houses from or to property owned individually by those person; however, a special permit will be required for all moves.

324.742. VIOLATIONS, PENALTY. — Any person violating sections 324.700 to 324.745 or the regulations of the division or department of transportation shall be guilty of a class A misdemeanor.

324.745. SEVERABILITY CLAUSE — APPLICABILITY EXCEPTIONS. — 1. If any provisions of sections 324.700 to 324.745, or if the application of such provisions to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision of sections 324.700 to 324.745 other than those as to which it is held valid, shall not be affected thereby.

2. Nothing in sections 324.700 to 324.745 shall be construed to limit, modify or supercede the standards governing the intrastate or interstate movement of property pursuant to 49 U.S.C. 14501 or 49 U.S.C. 14504.

3. The provisions of sections 324.700 to 324.745 shall not apply to housemovers engaged in the interstate movement of houses. Those engaged in the interstate movement of houses, however, shall comply with all applicable provisions of federal and state law with respect to the movement of such property.

700.015. CODE COMPLIANCE REQUIRED, WHEN — SEAL REQUIRED — EXEMPTIONS FROM CODE REQUIREMENTS FOR SALE OF NEW RECREATIONAL VEHICLES AND PARK TRAILERS. — 1. No person shall rent, lease, sell or offer for sale any **new** manufactured home manufactured after January 1, 1974, unless such manufactured home complies with the code and bears the proper seal.

2. No person shall manufacture in this state any manufactured home or modular unit for rent, lease or sale within the state which does not bear a seal evidencing compliance with the code.

3. Unless otherwise required by federal law or regulations, nothing in sections 700.010 to 700.115 shall apply to a manufactured home or modular unit being built expressly for export and sold for use solely outside this state.

4. No person shall offer for rent, lease or sale a **new** modular unit **or a unit used for educational purposes** manufactured after January 1, 1974, unless such modular unit complies with the code and bears a seal issued by the commission evidencing compliance with the code.

5. No manufacturer shall sell or offer for sale within this state:

(1) Any new recreational vehicle that is not manufactured in compliance with the American National Standards Institute (ANSI) A119.2 Standard on Recreational Vehicles; or

(2) Any new recreational park trailer that is not manufactured in compliance with the American National Standards Institute (ANSI) A119.5 Standard on Recreational Park Trailers.

700.025. ALTERATION OF UNIT WITH SEAL, PROHIBITED WHEN. — No **[**person**] dealer, manufacturer or their representative** shall alter or cause to be altered any **new** manufactured home or modular unit **or used modular unit used for educational purposes** to which a seal has been affixed, if such alteration or conversion causes the manufactured home or modular unit to be in violation of the code.

700.045. CERTAIN ACTS DECLARED MISDEMEANORS. — It shall be a misdemeanor:

(1) For a manufacturer or dealer to manufacture, rent, lease, sell or offer to sell any manufactured home or modular unit after January 1, 1977, unless there is in effect a registration with the commission;

(2) To rent, lease, sell or offer to sell any **new** manufactured home or **new** modular unit **or used modular unit used for educational purposes** manufactured after January 1, 1974, which does not bear a seal as required by sections 700.010 to 700.115;

(3) To affix a seal or cause a seal to be affixed to any manufactured home or modular unit which does not comply with the code;

(4) To alter a manufactured home or modular unit in a manner prohibited by the provisions of sections 700.010 to 700.115;

(5) To fail to correct **within a reasonable time not to exceed ninety days after being ordered to do so in writing by an authorized representative of the commission** a code violation in a **new** manufactured home or **new** modular unit **or used modular unit used for educational purposes** owned, manufactured or sold **[**within a reasonable time not to exceed ninety days after being ordered to do so in writing by an authorized representative of the commission,**]** if the same is manufactured after January 1, 1974; or

(6) To interfere with, obstruct, or hinder any authorized representative of the commission in the performance of his **or her** duties.

700.050. ISSUANCE OF SEALS TO MANUFACTURER SUSPENDED, WHEN — REMOVAL OF ATTACHED SEAL, WHEN. — The issuance of seals to any manufacturer in violation of the provisions of sections 700.010 to 700.115 may be suspended by the commission and no further seals shall be issued to any such manufacturer except upon proof satisfactory to the commission that the conditions which brought about the violation have been remedied. Seals remain the property of the state and may be removed by the commission from any **new** manufactured home or **new** modular unit **or used modular unit used for educational purposes** which is in violation of the code.

700.090. MANUFACTURERS AND DEALERS TO REGISTER — COMMISSION TO ISSUE CERTIFICATE, WHEN — REGISTRATION TO BE RENEWED, WHEN, FEE — RENEWALS MAY BE

STAGGERED. — 1. Every manufacturer or dealer of manufactured homes who sells or offers for sale, on consignment or otherwise, a manufactured home or modular unit from or in the state of Missouri shall register **each location** with the commission.

2. The commission shall issue a certificate of registration to a manufacturer who:

(1) Completes and files with the commission an application for registration which contains the following information:

(a) The name of the manufacturer;

(b) The address of the manufacturer and addresses of each factory owned or operated by the manufacturer, if different from the address of the manufacturer;

(c) If a corporation, the state of original incorporation, a list of the names and addresses of all officers and directors of the corporation, and proof of the filing of all franchise and sales tax forms required by Missouri law;

(d) If not a corporation, the name and address of the managing person or persons responsible for overall operation of the manufacturer;

(2) Files with the commission an initial registration fee of **[**two**]** **seven** hundred fifty dollars in the form of a cashier's check or money order made payable to the state of Missouri.

3. The commission shall issue a certificate of registration to a dealer who:

(1) Completes and files with the commission an application for registration which contains the following information:

(a) The name of the dealer;

(b) The business address of the dealer and addresses of each separate facility owned and operated by the dealer from which manufactured homes or modular units are offered for sale if different from the business address of the dealer;

(c) If a corporation, the state of original incorporation, a list of the names and addresses of all officers and directors of the corporation, proof of the filing of all franchise and sales tax forms required by Missouri law;

(d) If not a corporation, the name and address of the managing person or persons responsible for the overall operations of the manufacturer;

(2) Files with the commission an initial registration fee of **[**fifty**]** **two hundred** dollars in the form of a cashier's check or money order made payable to the state of Missouri;

(3) Files with the commission proof of compliance with the provisions of section **[**301.250, RSMo, and section**]** 301.280, RSMo.

4. The registration of any manufacturer or dealer shall be effective for a period of one year and shall be renewed by the commission upon receipt by it from the registered dealer of a renewal fee of **[**two**]** **seven** hundred fifty dollars for manufacturers and **[**fifty**]** **two hundred** dollars for dealers and a form provided by the commission upon which shall be placed any changes from the information requested on the initial registration form.

5. The commission may stagger the renewal of certificates of registration to provide for more equal distribution over the twelve months of the number of registration renewals.

700.100. REFUSAL TO RENEW, GROUNDS, NOTIFICATION TO APPLICANT, CONTENTS — COMPLAINTS MAY BE CONSIDERED. — 1. The commission may refuse to register or refuse to renew the registration of any person who fails to comply with the provisions of section 700.090 or this section. Notification of unfavorable action by the commission on any application for registration or renewal of registration must be delivered to the applicant within thirty days from date it is received by the commission. Notification of unfavorable action by the commission on any application for registration or renewal of registration must be accompanied by a notice informing the recipient that the decision of the commission may be appealed as provided in chapter 386, RSMo.

2. The commission may consider a complaint filed with it charging a registered manufacturer or dealer with a violation of the provisions of this section, which charges, if proven,

shall constitute grounds for revocation or suspension of his registration, or the placing of the registered manufacturer or dealer on probation.

3. The following specifications shall constitute grounds for the suspension, revocation or placing on probation of a manufacturer's or dealer's registration:

(1) If required, failure to comply with the provisions of **[**section 301.250, RSMo, or**]** section 301.280, RSMo;

(2) Failing to be in compliance with the provisions of section 700.090;

(3) If a corporation, failing to file all franchise or sales tax forms required by Missouri law;

(4) Engaging in any conduct which constitutes a violation of the provisions of section 407.020, RSMo;

(5) Failing to comply with the provisions of Sections 2301-2312 of Title 15 of the United States Code (Magnuson-Moss Warranty Act);

(6) As a dealer, failing to arrange for the proper initial setup of any new **[**or used**]** manufactured home or modular unit sold from or in the state of Missouri, unless the dealer receives a written waiver of that service from the purchaser or his **or her** authorized agent **[**and an amount equal to the actual cost of the setup is deducted from the total cost of the manufactured home or modular unit**]**;

(7) Requiring any person to purchase any type of insurance from that manufacturer or dealer as a condition to his being sold any manufactured home or modular unit;

(8) Requiring any person to arrange financing or utilize the services of any particular financing service as a condition to his being sold any manufactured home or modular unit; provided, however, the registered manufacturer or dealer may reserve the right to establish reasonable conditions for the approval of any financing source;

(9) Engaging in conduct in violation of section 700.045;

(10) Failing to comply with the provisions of section 301.210, RSMo**;**

(11) Failing to pay all necessary fees and assessments authorized pursuant to sections 700.010 to 700.115.

Approved July 6, 2001

SB 319 [CCS HCS SB 319]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Limits use of assessments of students for whom English is a second language.

AN ACT to repeal sections 160.518, 167.640 and 167.645, RSMo 2000, and to enact in lieu thereof four new sections relating to assessment of students, with an emergency clause.

SECTION

A. Enacting clause.
160.518. Statewide assessment system, standards, restriction — exemplary levels, outstanding school waivers — summary waiver of pupil testing requirements — waiver void, when — scores not counted, when.
167.640. Student promotion conditioned on remediation — tutorial activities and other suggested programs.
167.645. Reading assessments required, when — reading improvement plan required, when — additional reading instruction required, when — retention in grade permitted, when.
167.680. After-school retreat reading and assessment program established — grants awarded, procedure — fund created — rulemaking authority.
B. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 160.518, 167.640 and 167.645, RSMo 2000, are repealed and four new sections enacted in lieu thereof, to be known as sections 160.518, 167.640, 167.645 and 167.680, to read as follows:

160.518. STATEWIDE ASSESSMENT SYSTEM, STANDARDS, RESTRICTION — EXEMPLARY LEVELS, OUTSTANDING SCHOOL WAIVERS — SUMMARY WAIVER OF PUPIL TESTING REQUIREMENTS — WAIVER VOID, WHEN — SCORES NOT COUNTED, WHEN. — 1. Consistent with the provisions contained in section 160.526, the state board of education shall develop a statewide assessment system that provides maximum flexibility for local school districts to determine the degree to which students in the public schools of the state are proficient in the knowledge, skills and competencies adopted by such board pursuant to subsection 1 of section 160.514. The statewide assessment system shall assess problem solving, analytical ability, evaluation, creativity and application ability in the different content areas and shall be performance-based to identify what students know, as well as what they are able to do, and shall enable teachers to evaluate actual academic performance. The assessment system shall neither promote nor prohibit rote memorization and shall not include existing versions of tests approved for use pursuant to the provisions of section 160.257, nor enhanced versions of such tests. The statewide assessment shall measure, where appropriate by grade level, a student's knowledge of academic subjects including, but not limited to, reading skills, writing skills, mathematics skills, world and American history, forms of government, geography and science.

2. The assessment system shall only permit the academic performance of students in each school in the state to be tracked against prior academic performance in the same school.

3. The state board of education shall suggest criteria for a school to demonstrate that its students learn the knowledge, skills and competencies at exemplary levels worthy of imitation by students in other schools in the state and nation. "Exemplary levels" shall be measured by the assessment system developed pursuant to subsection 1 of this section, or until said assessment is available, by indicators approved for such use by the state board of education. The provisions of other law to the contrary notwithstanding, the commissioner of education may, upon request of the school district, present a plan for the waiver of rules and regulations to any such school, to be known as "Outstanding Schools Waivers", consistent with the provisions of subsection 4 of this section.

4. For any school that meets the criteria established by the state board of education for three successive school years pursuant to the provisions of subsection 3 of this section, by August first following the third such school year, the commissioner of education shall present a plan to the superintendent of the school district in which such school is located for the waiver of rules and regulations to promote flexibility in the operations of the school and to enhance and encourage efficiency in the delivery of instructional services. The provisions of other law to the contrary notwithstanding, the plan presented to the superintendent shall provide a summary waiver, with no conditions, for the pupil testing requirements pursuant to section 160.257, in the school. Further, the provisions of other law to the contrary notwithstanding, the plan shall detail a means for the waiver of requirements otherwise imposed on the school related to the authority of the state board of education to classify school districts pursuant to subdivision (9) of section 161.092, RSMo, and such other rules and regulations as determined by the commissioner of education, excepting such waivers shall be confined to the school and not other schools in the district unless such other schools meet the criteria established by the state board of education consistent with subsection 3 of this section and the waivers shall not include the requirements contained in this section and section 160.514. Any waiver provided to any school as outlined in this subsection shall be void on June thirtieth of any school year in which the school fails to meet the criteria established by the state board of education consistent with subsection 3 of this section.

5. The score on any assessment test developed pursuant to this section or this chapter of any student for whom English is a second language shall not be counted until such time

as such student has been educated for three full school years in a school in this state, or in any other state, in which English is the primary language.

167.640. STUDENT PROMOTION CONDITIONED ON REMEDIATION — TUTORIAL ACTIVITIES AND OTHER SUGGESTED PROGRAMS. — 1. School districts may adopt a policy with regard to student promotion which may require remediation as a condition of promotion to the next grade level for any student identified by the district as failing to master skills and competencies established for that particular grade level by the district board of education. School districts may also require parents or guardians of such students to commit to conduct home-based tutorial activities with their children or, in the case of a student with disabilities eligible for services pursuant to sections 162.670 to 162.1000, RSMo, the individual education plan shall determine the nature of parental involvement consistent with the requirements for a free, appropriate public education.

2. Such remediation shall recognize that different students learn differently and shall employ methods designed to help these students achieve at high levels. Such remediation may include, but shall not necessarily be limited to, a mandatory summer school program focused on the areas of deficiency or other such activities conducted by the school district outside of the regular school day. Decisions concerning the instruction of a child who receives special educational services pursuant to sections 162.670 to 162.1000, RSMo, shall be made in accordance with the child's individualized education plan.

3. School districts providing remediation pursuant to this section outside of the traditional school day may count extra hours of instruction in the calculation of average daily attendance as defined in section 163.011, RSMo.

[4. Any student scoring at the lowest level of proficiency, in any subject, at any grade level under the statewide assessment established pursuant to section 160.518, RSMo, shall be required to retake that assessment in the following year. School districts shall evaluate student progress toward proficiency after the initial assessment and report this progress in the aggregate at the building level as a part of the annual report issued to patrons of the district pursuant to section 160.522, RSMo.

5. The state board of education shall establish by administrative rule a method for determining effectiveness of the remediation to students identified pursuant to subsection 4 of this section. Such rule shall make allowances for students who have recently entered the school district. School districts are required to report only the scores of students meeting the district's attendance policy and no report shall disclose student achievement data in such a manner that would personally identify any student.

6. The state board of education, beginning in the 2001-02 school year, shall include the data reported pursuant to subsection 4 of this section as an element in identifying academically deficient schools pursuant to section 160.538, RSMo, and in the school accreditation process pursuant to section 161.092, RSMo.**]**

167.645. READING ASSESSMENTS REQUIRED, WHEN — READING IMPROVEMENT PLAN REQUIRED, WHEN — ADDITIONAL READING INSTRUCTION REQUIRED, WHEN — RETENTION IN GRADE PERMITTED, WHEN. — **[**No public school student shall be promoted to a higher grade level unless that student has a reading ability level at or above one grade level below the student's grade level; except that the provisions of this subsection shall not apply to students receiving special education services pursuant to sections 162.670 to 162.999, RSMo.**] 1. For purposes of this section, the following terms mean:**

(1) "Reading assessment", a recognized method of judging a student's reading ability, with results expressed as reading at a particular grade level. The term reading assessment shall include, but is not limited to, standard checklists designed for use as a student reads out loud, paper-and-pencil tests promulgated by nationally recognized organizations and other recognized methods of determining a student's reading accuracy, expression, fluency

and comprehension in order to make a determination of the student's grade-level reading ability. Assessments which do not give a grade-level result may be used in combination with other assessments to reach a grade-level determination. Districts are encouraged but not required to select assessment methods identified pursuant to section 167.346. Districts are also encouraged to use multiple methods of assessment;

(2) "Summer school", for reading instruction purposes, a minimum of forty hours of reading instruction and practice. A school district may arrange the hours and days of instruction to coordinate with its regular program of summer school.

2. For purposes of this section, methods of reading assessment shall be determined by each school district. Unless a student has been determined in the current school year to be reading at grade level or above, each school district shall administer a reading assessment or set of assessments to each student within forty-five days of the end of the third-grade year, except that the provisions of this subsection shall not apply to students receiving special education services under an individualized education plan pursuant to sections 162.670 to 162.999, RSMo, to students receiving services pursuant to Section 504 of the Rehabilitation Act of 1973 whose services plan includes an element addressing reading or to students determined to have limited English proficiency or to students who have been determined, prior to the beginning of any school year, to have a cognitive ability insufficient to meet the reading requirement set out in this section, provided that districts shall provide reading improvement plans for students determined to have such insufficient cognitive ability. The assessment required by this subsection shall also be required for students who enter a school district in grades fourth, fifth or sixth unless such student has been determined in the current school year to be reading at grade level or above.

3. Beginning with school year 2002-2003, for each student whose third-grade reading assessment determines that such student is reading below second-grade level, the school district shall design a reading improvement plan for the student's fourth-grade year. Such reading improvement plan shall include, at a minimum, thirty hours of additional reading instruction or practice outside the regular school day during the fourth-grade year. The school district shall determine the method of reading instruction necessary to enforce this subsection. The school district may also require the student to attend summer school for reading instruction as a condition of promotion to fourth grade. The department of elementary and secondary education may, from funds appropriated for the purpose, reimburse school districts for additional instructional personnel costs incurred in the implementation and execution of the thirty hours of additional reading instruction minus the revenue generated by the school district through the foundation formula for the additional reading instruction average daily attendance.

4. Each student for whom a reading improvement plan has been designed pursuant to subsection 3 of this section shall be given another reading assessment, to be administered within forty-five days of the end of such student's fourth-grade year. If such student is determined to be reading below third-grade level, the student shall be required to attend summer school to receive reading instruction. At the end of such summer school instruction, such student shall be given another reading assessment. If such student is determined to be reading below third-grade level, the district shall notify the student's parents or guardians, and the student shall not be promoted to fifth grade. No student shall be denied promotion more than once solely for inability to meet the reading standards set out in this section.

5. The process described in subsections 3 and 4 of this section shall be repeated as necessary through the end of the sixth grade, with the target grade level rising accordingly. Mandatory retention in grade shall not apply to grades subsequent to fourth grade.

6. The mandatory process of additional reading instruction pursuant to this section shall cease at the end of the sixth grade. The permanent record of students who are

determined to be reading below the fifth-grade level at the end of sixth grade shall carry a notation advising that such student has not met minimal reading standards. The notation shall stay on the student's record until such time as the district determines that a student has met minimal reading standards.

7. Each school district shall be required to offer summer school reading instruction to any student with a reading improvement plan. Districts may fulfill the requirement of this section through cooperative arrangements with neighboring districts; provided that such districts shall timely make all payments provided pursuant to such cooperative agreements.

8. A school district may adopt a policy that requires retention in grade of any student who has been determined to require summer school instruction in reading and who does not fulfill the summer school attendance requirement.

9. Nothing in this section shall preclude a school district from retaining any student in grade when a determination is made in accordance with district policy that retention is in the best interests of the student.

10. The state board of education shall not incorporate information about the number of students receiving additional instruction pursuant to this section into any element of any standard of the Missouri school improvement program or its successor accreditation program; provided, however, each district shall make available, upon the request of any parent, patron, or media outlet within the district, the number and percentage of students receiving remediation pursuant to this section. The information shall be presented in a way that does not permit personal identification of any student or educational personnel.

11. Each school district shall make a systematic effort to inform parents of the methods and materials used to teach reading in kindergarten through fourth grade, in terms understandable to a layperson and shall similarly inform parents of students for whom a reading improvement plan is required pursuant to this section.

167.680. AFTER-SCHOOL RETREAT READING AND ASSESSMENT PROGRAM ESTABLISHED — GRANTS AWARDED, PROCEDURE — FUND CREATED — RULEMAKING AUTHORITY. — 1. There is hereby established within the department of elementary and secondary education the "After-School Retreat Reading and Assessment Grant Program". Beginning with the 2002-2003 school year, the program shall award grants to schools on a competitive grant basis. School districts may develop after-school reading and assessment programs and submit proposals to the department, pursuant to criteria established by the department for grant approval and on forms promulgated by the department for grant applications. Copies of the criteria established pursuant to this section shall be provided by the department to all school districts in this state. In awarding such grants, the department shall grant preference to school districts with a higher percentage of at-risk students, as the department may determine. In addition, the criteria for grant approval by the department may include, but shall not be limited to:

(1) The development of programs which are educational in nature, with emphasis in reading and student assessment thereof as opposed to day-care oriented programs; or

(2) Other criteria as the department may deem appropriate.

2. Subject to appropriation, beginning with the 2002-2003 school year, the department shall award grants to school districts for the development and implementation of after-school retreat programs consistent with this section. In the event that the appropriations or other moneys available for such grants are less than the amount necessary to fully fund all approved grants for the 2002-2003 school year or any subsequent school year, the moneys shall be distributed to approved schools on a pro rata basis.

3. There is hereby created in the state treasury the "After-School Retreat Reading and Assessment Grant Program Fund". The fund shall be administered by the

department. The fund shall consist of moneys appropriated annually by the general assembly from general revenue to such fund, any moneys paid into the state treasury and required by law to be credited to such fund and any gifts, bequests or donations to such fund. The fund shall be kept separate and apart from all other moneys in the state treasury and shall be paid out by the state treasurer pursuant to chapter 33, RSMo. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund at the end of the biennium shall not be transferred to the credit of the general revenue fund. All interest and moneys earned on the fund shall be credited to the fund.

4. No rule or portion of a rule promulgated pursuant to this section shall take effect unless such rule has been promulgated pursuant to chapter 536, RSMo.

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to preserve the reading ability of the elementary school students of Missouri, the repeal and reenactment of sections 160.518, 167.640 and 167.645 and the enactment of section 167.680 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 160.518, 167.640 and 167.645 and the enactment of section 167.680 of this act shall be in full force and effect on July 1, 2001, or upon its passage and approval, whichever later occurs.

Approved June 29, 2001

SB 321 [HCS SB 321]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows sheltered workshops to file data with DESE via electronic means.

AN ACT to repeal section 178.930, RSMo 2000, relating to sheltered workshops, and to enact in lieu thereof one new section relating to the same subject.

SECTION

A. Enacting clause.

178.930. State aid, computation of — records, kept on premises — sheltered workshop per diem revolving fund created.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 178.930, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 178.930, to read as follows:

178.930. STATE AID, COMPUTATION OF — RECORDS, KEPT ON PREMISES — SHELTERED WORKSHOP PER DIEM REVOLVING FUND CREATED. — 1. **[**Until June 30, 1998, the department of elementary and secondary education shall pay monthly, out of the funds appropriated to it for that purpose, to each sheltered workshop a sum equal to eleven dollars multiplied by the number of six-hour or longer days worked by handicapped workers during the preceding calendar month. For each handicapped worker employed by a sheltered workshop for less than a six-hour day, the workshop shall receive a percentage of the eleven dollars based on the percentage of the six-hour day worked by the handicapped employee.

2. Beginning July 1, 1998, until June 30, 1999, the department of elementary and secondary education shall pay monthly, out of the funds appropriated to it for that purpose, to each sheltered workshop a sum equal to twelve dollars multiplied by the number of six-hour or longer days worked by handicapped workers during the preceding calendar month. For each handicapped worker employed by a sheltered workshop for less than a six-hour day, the workshop shall receive a percentage of the twelve dollars based on the percentage of the six-hour day worked by the handicapped employee.

3.**]** Beginning July 1, 1999, and thereafter, the department of elementary and secondary education shall pay monthly, out of the funds appropriated to it for that purpose, to each sheltered workshop a sum equal to thirteen dollars multiplied by the number of six-hour or longer days worked by handicapped workers during the preceding calendar month. For each handicapped worker employed by a sheltered workshop for less than a six-hour day, the workshop shall receive a percentage of the thirteen dollars based on the percentage of the six-hour day worked by the handicapped employee.

[4.**]** **2.** The department shall accept, as prima facie proof of payment due to a sheltered workshop, **information as designated by the department, either in paper or electronic format.** A statement signed by the president **[**and**],** secretary**, and manager** of the sheltered workshop, setting forth the dates worked and the number of hours worked each day by each handicapped person employed by that sheltered workshop during the preceding calendar month, together with any other information required by the rules or regulations of the department**, shall be maintained at the workshop location**.

3. There is hereby created in the state treasury the "Sheltered Workshop Per Diem Revolving Fund" which shall be administered by the commissioner of the department of elementary and secondary education. All moneys appropriated pursuant to subsection 1 of this section shall be deposited in the fund and expended as described in subsection 1 of this section.

4. The balance of the sheltered workshop per diem revolving fund shall not exceed five hundred thousand dollars at the end of each fiscal year and shall be exempt from the provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to the general revenue fund. Any unexpended balance in the sheltered workshop per diem revolving fund at the end of each fiscal year exceeding five hundred thousand dollars shall be deposited in the general revenue fund.

Approved July 12, 2001

SB 323 [CCS HS SS SCS SB 323 & 230]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows creation of Tourism Community Enhancement Districts by certain political subdivisions.

AN ACT to repeal sections 67.1003, 67.1300, 67.1360, 67.1775, 94.812 and 210.861, RSMo 2000, and to enact in lieu thereof thirty-three new sections relating to certain local taxes.

SECTION

A. Enacting clause.
67.571. Museums and festivals, sales tax authorized (Buchanan County).
67.572. Repeal of sales tax, procedure.

67.573. Sales tax to be an additional tax to taxes in chapter 144 — computation of tax.
67.574. Director of revenue to be responsible for administration and operation of the tax.
67.576. Collection of the tax requirements — applicable penalties.
67.577. Delinquency in payment, limitation for bringing suit.
67.1003. Transient guest tax on hotels and motels in counties and cities meeting a room requirement or a population requirement, amount, issue submitted to voters, ballot language.
67.1005. Transient guest tax on hotels and motels in cities and counties — issue submitted to voters, ballot language.
67.1300. Sales tax authorized certain counties — rate — ballot form — expenditures — local economic development sales tax trust fund created — deposit, records, distribution refunds — abolishing tax — sections 32.085 and 32.087 applicable — economic development, definition.
67.1360. Transient guests to pay tax for funding the promotion of tourism, certain cities and counties, vote required.
67.1775. Authorizes local sales tax in certain counties and cities to provide community services for children — establishes fund.
67.1922. Water quality, infrastructure and tourism, sales tax authorized for certain counties — ballot language.
67.1925. Special trust fund created.
67.1928. Authorized appropriations from special trust fund.
67.1931. Indebtedness authorized to accomplish purposes of certain taxes.
67.1934. Repeal of tax, submitted to voters, ballot language.
67.1937. Safekeeping of county permanent records — accounting records and annual audit.
67.1940. Donation of property to county.
67.1950. Definitions.
67.1953. Tourism community enhancement district authorized for certain counties — boundaries — procedure.
67.1956. Board of directors, members, terms, duties.
67.1959. Sales tax imposed, when — submitted to voters, ballot language.
67.1962. Special trust fund created.
67.1965. County collector to collect tax at discretion of the board — rules.
67.1968. Expenditure of sales tax revenue, conditions.
67.1971. Reduction of liability for entities remitting the sales tax.
67.1974. Expansion of district boundaries, procedure.
67.1977. Dissolution and repeal of the tax, procedure.
67.1978. Annual audit required.
67.1979. Removal of board members.
94.812. Retailers liable for tax, collection and return of taxes (Branson).
210.861. Board of directors, term, expenses, organization — powers — funds, expenditure, purpose, restrictions.
1. Additional fee for short-term rentals of motor vehicles, check-off box provided (Platte County).

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 67.1003, 67.1300, 67.1360, 67.1775, 94.812 and 210.861, RSMo 2000, are repealed and thirty-three new sections enacted in lieu thereof, to be known as sections 67.571, 67.572, 67.573, 67.574, 67.576, 67.577, 67.1003, 67.1005, 67.1300, 67.1360, 67.1775, 67.1922, 67.1925, 67.1928, 67.1931, 67.1934, 67.1937, 67.1940, 67.1950, 67.1953, 67.1956, 67.1959, 67.1962, 67.1965, 67.1968, 67.1971, 67.1974, 67.1977, 67.1978, 67.1979, 94.812, 210.861 and 1, to read as follows:

67.571. MUSEUMS AND FESTIVALS, SALES TAX AUTHORIZED (BUCHANAN COUNTY). — 1. The governing body of any county of the first classification with a population of more than eighty-two thousand inhabitants and less than ninety thousand inhabitants may, in addition to any tourism sales tax imposed pursuant to sections 67.671 to 67.685, by a majority vote, impose a sales tax for the funding of museums and festivals. For purposes of this section, the term "funding of museums and festivals" shall mean:

(1) Funding of museums operating in the county, which are registered with the United States Internal Revenue Services as a 501(C)(3) corporation and which are considered by the board to be tourism attractions; and

(2) Funding of organizations that are registered as 501(C)(3) corporations which promote cultural heritage tourism including festivals and the arts.

2. Any question submitted to the voters of such county to establish a sales tax pursuant to this section, shall be submitted in substantially the following form:

"Shall the county of ..... (insert the name of the county) impose a sales tax of ..... (insert rate of percent) percent to be used to fund (museums, cultural heritage, festivals) in certain areas of the county?

[ ] YES [ ] NO

3. If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, and the tax takes effect pursuant to this section, the museums and festivals board appointed pursuant to subsection 5 of this section shall determine in what manner the tax revenue moneys will be expended, and disbursements of these moneys shall be made strictly in accordance with directions of the board which are consistent with the provisions of sections 67.571 to 67.577. Expenditures of these tax moneys may be made for the employment of personnel selected by the board to assist in carrying out the duties of the board, and the board is expressly authorized to employ such personnel. Expenditures of these tax moneys may be made directly to corporations pursuant to subsection 1 of this section. No such tax revenue moneys shall be disbursed to or on behalf of any corporation, organization or entity that is not duly registered with the Internal Revenue Service as a 501(C)(3) organization.

4. Any sales tax imposed pursuant to this section shall be imposed at a rate not to exceed two tenths of one percent on receipts from the sale of certain tangible personal property or taxable services within the county pursuant to sections 67.571 to 67.577.

5. The governing body of any county which imposes a sales tax pursuant to this section may establish a museums and festivals board for the purpose of expending funds collected from any sales tax submitted and approved by the county's voters pursuant to this section. The board shall be comprised of six members who are appointed by the governing body of the county from a list of candidates supplied by the chair of each of the two major political parties of the county. The board shall be comprised of three members from each of the two political parties. Members shall serve for three-year terms, but of the members first appointed, one shall be appointed for a term of one year, two shall be appointed for a term of two years, and two shall be appointed for a term of three years. Each member shall be a resident of the county from which he or she is appointed. The members of the board shall not receive compensation for service on the board, but shall be reimbursed from the tax revenue money for any reasonable and necessary expenses incurred in service on the board.

6. In the area of each county in which a sales tax has been imposed in the manner provided by sections 67.571 to 67.577, every retailer within such area shall add the tax imposed by the provisions of sections 67.571 to 67.577 to his sale price, and this tax shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price.

7. In counties imposing a tax under the provisions of sections 67.571 to 67.577, in order to permit sellers required to collect and report the sales tax to collect the amount required to be reported and remitted, but not to change the requirements of reporting or remitting the tax, or to serve as a levy of the tax, and in order to avoid fractions of pennies, the governing body may authorize the use of a bracket system similar to that authorized by the provisions of section 144.285, RSMo, and notwithstanding the provisions of that section, this new bracket system shall be used where this tax is imposed and shall apply to all taxable transactions.

67.572. REPEAL OF SALES TAX, PROCEDURE. — The governing body of any county which has adopted a sales tax pursuant to sections 67.571 to 67.577 may submit the question of repeal of the tax to the voters at any primary or general election. The ballot of submission shall be in substantially the following form:

Shall the county of ..... (insert name of county) repeal the museum and festivals sales tax of ..... (insert rate of percent) percent in effect in certain areas of the county?

[ ] YES [ ] NO

If a majority of the votes cast on the proposal are in favor of repeal, that repeal shall become effective on December thirty-first of the calendar year in which such repeal was approved.

67.573. SALES TAX TO BE AN ADDITIONAL TAX TO TAXES IN CHAPTER 144 — COMPUTATION OF TAX. — The order imposing the sales tax pursuant to the provisions of sections 67.571 to 67.577 shall impose upon all sellers within the area wherein the tax is to be paid an additional tax on all goods subject to tax included in chapter 144, RSMo. The amount reported and returned by the seller shall be computed on the basis of the tax imposed by the order as authorized by sections 67.571 to 67.577. The seller shall report and return the amount so computed to the director of revenue.

67.574. DIRECTOR OF REVENUE TO BE RESPONSIBLE FOR ADMINISTRATION AND OPERATION OF THE TAX. — On or after the effective date of any tax imposed throughout a county pursuant to the provisions of sections 67.571 to 67.577, the director of revenue shall be responsible for the administration, collection, enforcement, and operation of the tax, and all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax so imposed, the provisions of sections 67.671 to 67.685 to the contrary notwithstanding. An amount not to exceed one percent shall be retained by the director of revenue for deposit in the general revenue fund to offset the costs of collection.

67.576. COLLECTION OF THE TAX REQUIREMENTS — APPLICABLE PENALTIES. — 1. The following provisions shall govern the collection of the tax imposed by the provisions of sections 67.571 to 67.577:

(1) All applicable provisions contained in sections 144.010 to 144.510, RSMo, governing the state sales tax and section 32.057, RSMo, the uniform confidentiality provision, shall apply to the collection of the tax imposed by the provisions of sections 67.571 to 67.577;

(2) All exemptions granted to agencies of government, organizations, and persons under the provisions of sections 144.010 to 144.510, RSMo, are hereby made applicable to the imposition and collection of the tax imposed by sections 67.571 to 67.577.

2. The same sales tax permit, exemption certificate and retail certificate required by sections 144.010 to 144.510, RSMo, for the administration and collection of the state sales tax shall satisfy the requirements of sections 67.571 to 67.577, and no additional permit or exemption certificate or retail certificate shall be required; except that, the director of revenue may prescribe a form of exemption certificate for an exemption from the tax imposed by sections 67.571 to 67.577.

3. All discounts allowed the retailer pursuant to the provisions of the state sales tax law for the collection of and for payment of taxes pursuant to that act are hereby allowed and made applicable to any taxes collected pursuant to the provisions of sections 67.571 to 67.577.

4. The penalties provided in section 32.057, RSMo, and sections 144.010 to 144.510, RSMo, for a violation of those acts are hereby made applicable to violations of the provisions of sections 67.571 to 67.577.

5. For the purposes of the sales tax imposed by an order pursuant to sections 67.571 to 67.577, all retail sales shall be deemed to be consummated at the place of business of the retailer.

67.577. DELINQUENCY IN PAYMENT, LIMITATION FOR BRINGING SUIT. — In any county or area of a county where a sales tax has been imposed pursuant to sections 67.571 to 67.577, if any person is delinquent in the payment of the amount required to be paid by him pursuant to the provisions of sections 67.571 to 67.577 or in the event a determination has been made against him for taxes and penalty pursuant to the provisions of sections 67.571 to 67.577, the limitation for bringing suit for the collection of the delinquent tax and penalty shall be the same as that provided in sections 144.010 to 144.510, RSMo.

67.1003. TRANSIENT GUEST TAX ON HOTELS AND MOTELS IN COUNTIES AND CITIES MEETING A ROOM REQUIREMENT OR A POPULATION REQUIREMENT, AMOUNT, ISSUE SUBMITTED TO VOTERS, BALLOT LANGUAGE. — 1. The governing body of any city or county, other than a city or county already imposing a tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in such city or county or a portion thereof pursuant to any other law of this state, having more than three hundred fifty hotel and motel rooms inside such city or county or a county of the third classification with a population of (1) more than seven thousand but less than seven thousand four hundred inhabitants; (2) or a third class city with a population of greater than ten thousand but less than eleven thousand located in a county of the third classification with a township form of government with a population of more than thirty thousand; (3) or a county of the third classification with a township form of government with a population of more than twenty thousand but less than twenty-one thousand or any third class city with a population of more than eleven thousand but less than thirteen thousand which is located in a county of the third classification with a population of more than twenty-three thousand but less than twenty-six thousand may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels or motels situated in the city or county or a portion thereof, which shall be not more than five percent per occupied room per night, except that such tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at a state general or primary election, a proposal to authorize the governing body of the city or county to impose a tax pursuant to this section. The tax authorized by this section shall be in addition to the charge for the sleeping room and shall be in addition to any and all taxes imposed by law and the proceeds of such tax shall be used by the city or county solely for the promotion of tourism. Such tax shall be stated separately from all other charges and taxes.

2. Notwithstanding any other provision of law to the contrary, the tax authorized in this section shall not be imposed in any city or county already imposing such tax pursuant to any other law of this state**, except that cities of the third class having more than two thousand five hundred hotel and motel rooms, and located in a county of the first classification in which another tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in such county is imposed, may impose the tax authorized by this section of not more than one half of one percent per occupied room per night**.

3. The ballot of submission for the tax authorized in this section shall be in substantially the following form:

Shall (insert the name of the city or county) impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in (name of city or county) at a rate of (insert rate of percent) percent for the sole purpose of promoting tourism?

[ ] YES [ ] NO

4. As used in this section, "transient guests" means a person or persons who occupy a room or rooms in a hotel or motel for thirty-one days or less during any calendar quarter.

67.1005. TRANSIENT GUEST TAX ON HOTELS AND MOTELS IN CITIES AND COUNTIES — ISSUE SUBMITTED TO VOTERS, BALLOT LANGUAGE. — 1. The governing body of any city or county, other than a city or county already imposing a tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in such city or

county or a portion thereof pursuant to any other law of this state, having more than three hundred fifty hotel and motel rooms inside such city or county may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels or motels situated in the city or county or a portion thereof, which shall be not more than five percent per occupied room per night, except that such tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at a state general or primary election, a proposal to authorize the governing body of the city or county to impose a tax pursuant to this section and section 67.1002. The tax authorized by this section and section 67.1002 shall be in addition to the charge for the sleeping room and shall be in addition to any and all taxes imposed by law and the proceeds of such tax shall be used by the city or county solely for the promotion of tourism and for funding a convention and visitors bureau which shall be a general not-for-profit organization with whom the city or county has contracted, and which is established for the purpose of promoting the city or county as a convention, visitor and tourist center. Such tax shall be stated separately from all other charges and taxes.

2. The tax authorized in this section shall not be imposed in any city or county where another tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in such city or county or a portion thereof is imposed pursuant to any other law of this state, except that cities of the third class having more than two thousand five hundred hotel and motel rooms and located in a county of the first class where another tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in such county is imposed may impose the tax authorized in this section of not more than one-half percent per occupied room per night.

3. The ballot of submission for the tax authorized in this section shall be in substantially the following form:

Shall (insert the name of the city or county) impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels and motels situated in (name of city or county) at a rate of (insert rate of percent) percent?

[ ] YES [ ] NO

4. As used in this section, "transient guests" shall mean a person or persons who occupy room or rooms in a hotel or motel for thirty-one days or less during any calendar quarter.

67.1300. SALES TAX AUTHORIZED CERTAIN COUNTIES — RATE — BALLOT FORM — EXPENDITURES — LOCAL ECONOMIC DEVELOPMENT SALES TAX TRUST FUND CREATED — DEPOSIT, RECORDS, DISTRIBUTION REFUNDS — ABOLISHING TAX — SECTIONS 32.085 AND 32.087 APPLICABLE — ECONOMIC DEVELOPMENT, DEFINITION. — 1. The governing body of any of the contiguous counties of the third classification without a township form of government enumerated in subdivisions (1) to (5) of this subsection or in any county of the fourth classification acting as a county of the second classification, having a population of at least forty thousand but less than forty-five thousand with a state university, and adjoining a county of the first classification with part of a city with a population of three hundred fifty thousand or more inhabitants **or a county of the third classification with a township form of government and with a population of at least eight thousand but less than eight thousand four hundred inhabitants** or a county of the third classification with more than fifteen townships having a population of at least twenty-one thousand inhabitants or a county of the third classification without a township form of government and with a population of at least seven thousand four hundred but less than eight thousand inhabitants or any county of the third classification with a population greater than three thousand but less than four thousand or any county of the third classification with a population greater than six thousand one hundred but less than six thousand four hundred or any county of the third classification with a population greater than six thousand eight hundred but less than seven thousand or any county of the third

classification with a population greater than seven thousand eight hundred but less than seven thousand nine hundred or any county of the third classification with a population greater than eight thousand four hundred sixty but less than eight thousand five hundred or any county of the third classification with a population greater than nine thousand but less than nine thousand two hundred or any county of the third classification with a population greater than ten thousand five hundred but less than ten thousand six hundred or any county of the third classification with a population greater than twenty-three thousand five hundred but less than twenty-three thousand seven hundred or a county of the third classification with a population greater than thirty-three thousand but less than thirty-four thousand or a county of the third classification with a population greater than twenty thousand eight hundred but less than twenty-one thousand or a county of the third classification with a population greater than fourteen thousand one hundred but less than fourteen thousand five hundred or a county of the third classification with a population greater than twenty thousand eight hundred fifty but less than twenty-two thousand or a county of the third classification with a population greater than thirty-nine thousand but less than forty thousand or a county of the third classification with a township form of organization and a population greater than twenty-eight thousand but less than twenty-nine thousand or a county of the third classification with a population greater than fifteen thousand but less than fifteen thousand five hundred or a county of the third classification with a population greater than eighteen thousand but less than nineteen thousand seventy or a county of the third classification with a population greater than thirteen thousand nine hundred but less than fourteen thousand four hundred or a county of the third classification with a population greater than twenty-seven thousand but less than twenty-seven thousand five hundred or a county of the first classification without a charter form of government and a population of at least eighty thousand but not greater than eighty-three thousand or a county of the third classification with a population greater than fifteen thousand but less than fifteen thousand nine hundred without a township form of government which does not adjoin any county of the first, second or fourth classification or a county of the third classification with a population greater than twenty-three thousand but less than twenty-five thousand without a township form of government which does not adjoin any county of the second or fourth classification and does adjoin a county of the first classification with a population greater than one hundred twenty thousand but less than one hundred fifty thousand or in any county of the fourth classification acting as a county of the second classification, having a population of at least forty-eight thousand or any governing body of a municipality located in any of such counties may impose, by ordinance or order, a sales tax on all retail sales made in such county or municipality which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo:

(1) A county with a population of at least four thousand two hundred inhabitants but not more than four thousand five hundred inhabitants;

(2) A county with a population of at least four thousand seven hundred inhabitants but not more than four thousand nine hundred inhabitants;

(3) A county with a population of at least seven thousand three hundred inhabitants but not more than seven thousand six hundred inhabitants;

(4) A county with a population of at least ten thousand one hundred inhabitants but not more than ten thousand three hundred inhabitants; and

(5) A county with a population of at least four thousand three hundred inhabitants but not more than four thousand five hundred inhabitants.

2. The maximum rate for a sales tax pursuant to this section shall be one percent for municipalities and one-half of one percent for counties.

3. The tax authorized by this section shall be in addition to any and all other sales taxes allowed by law, except that no ordinance or order imposing a sales tax pursuant to the provisions of this section shall be effective unless the governing body of the county or municipality submits to the voters of the county or municipality, at a regularly scheduled county, municipal or state general or primary election, a proposal to authorize the governing body of the county or

municipality to impose a tax. Any sales tax imposed pursuant to this section shall not be authorized for a period of more than five years.

4. Such proposal shall be submitted in substantially the following form:

Shall the (city, town, village or county) of ..... impose a sales tax of ..... (insert amount) for the purpose of economic development in the (city, town, village or county)?

[ ] YES [ ] NO

If a majority of the votes cast on the proposal by the qualified voters voting thereon are in favor of the proposal, then the ordinance or order and any amendments thereto shall be in effect on the first day of the second quarter after the director of revenue receives notice of adoption of the tax. If a majority of the votes cast by the qualified voters voting are opposed to the proposal, then the governing body of the county or municipality shall not impose the sales tax authorized in this section until the governing body of the county or municipality resubmits another proposal to authorize the governing body of the county or municipality to impose the sales tax authorized by this section and such proposal is approved by a majority of the qualified voters voting thereon; however no such proposal shall be resubmitted to the voters sooner than twelve months from the date of the submission of the last such proposal.

5. All revenue received by a county or municipality from the tax authorized pursuant to the provisions of this section shall be deposited in a special trust fund and shall be used solely for economic development purposes within such county or municipality for so long as the tax shall remain in effect.

6. Once the tax authorized by this section is abolished or is terminated by any means, all funds remaining in the special trust fund shall be used solely for economic development purposes within the county or municipality. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other county or municipal funds.

7. All sales taxes collected by the director of revenue pursuant to this section on behalf of any county or municipality, less one percent for cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, RSMo, shall be deposited in a special trust fund, which is hereby created, to be known as the "Local Economic Development Sales Tax Trust Fund".

8. The moneys in the local economic development sales tax trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The director of revenue shall keep accurate records of the amount of money in the trust fund and which was collected in each county or municipality imposing a sales tax pursuant to this section, and the records shall be open to the inspection of officers of the county or municipality and the public.

9. Not later than the tenth day of each month the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the county or municipality which levied the tax. Such funds shall be deposited with the county treasurer of each such county or the appropriate municipal officer in the case of a municipal tax, and all expenditures of funds arising from the local economic development sales tax trust fund shall be by an appropriation act to be enacted by the governing body of each such county or municipality. Expenditures may be made from the fund for any economic development purposes authorized in the ordinance or order adopted by the governing body submitting the tax to the voters.

10. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credited to any county or municipality for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such counties and municipalities.

11. If any county or municipality abolishes the tax, the county or municipality shall notify the director of revenue of the action at least ninety days prior to the effective date of the repeal and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of

such accounts. After one year has elapsed after the effective date of abolition of the tax in such county or municipality, the director of revenue shall remit the balance in the account to the county or municipality and close the account of that county or municipality. The director of revenue shall notify each county or municipality of each instance of any amount refunded or any check redeemed from receipts due the county or municipality.

12. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed pursuant to this section.

13. For purposes of this section, the term "economic development" is limited to the following:

(1) Operations of economic development or community development offices, including the salaries of employees;

(2) Provision of training for job creation or retention;

(3) Provision of infrastructure and sites for industrial development or for public infrastructure projects; and

(4) Refurbishing of existing structures and property relating to community development.

67.1360. TRANSIENT GUESTS TO PAY TAX FOR FUNDING THE PROMOTION OF TOURISM, CERTAIN CITIES AND COUNTIES, VOTE REQUIRED. — The governing body of**:**

(1) A city with a population of more than seven thousand and less than seven thousand five hundred **[**and**];**

(2) A county with a population of over nine thousand six hundred and less than twelve thousand which has a total assessed valuation of at least sixty-three million dollars, if the county submits the issue to the voters of such county prior to January 1, 2003**[**, or**];**

(3) A third class city which is the county seat of a county of the third classification without a township form of government with a population of at least twenty-five thousand but not more than thirty thousand inhabitants**[**, or**];**

(4) Any fourth class city having, according to the last federal decennial census, a population of more than one thousand eight hundred fifty inhabitants but less than one thousand nine hundred fifty inhabitants in a county of the first classification with a charter form of government and having a population of greater than six hundred thousand but less than nine hundred thousand inhabitants**[**, or**];**

(5) Any city having a population of more than three thousand but less than eight thousand inhabitants in a county of the fourth classification having a population of greater than forty-eight thousand inhabitants**[**, or**];**

(6) Any city having a population of less than two hundred fifty inhabitants in a county of the fourth classification having a population of greater than forty-eight thousand inhabitants**[**, or**];**

(7) Any fourth class city having a population of more than two thousand five hundred but less than three thousand inhabitants in a county of the third classification having a population of more than twenty-five thousand but less than twenty-seven thousand inhabitants**[**, or**];**

(8) Any third class city with a population of more than three thousand two hundred but less than three thousand three hundred located in a county of the third classification having a population of more than thirty-five thousand but less than thirty-six thousand**[**, or**];**

(9) Any county of the second classification without a township form of government and a population of less than thirty thousand **[**or**];**

(10) Any city of the fourth class in a county of the second classification without a township form of government and a population of less than thirty thousand**[**, or**];**

(11) Any county of the third classification with a township form of government and a population of at least twenty-eight thousand but not more than thirty thousand **[**and**];**

(12) Any city of the fourth class with a population of more than one thousand eight hundred but less than two thousand in a county of the third classification with a township form of government and a population of at least twenty-eight thousand but not more than thirty thousand**[**, or**];**

(13) Any city of the third class with a population of more than seven thousand two hundred but less than seven thousand five hundred within a county of the third classification with a population of more than twenty-one thousand but less than twenty-three thousand**[**, or**];**

(14) Any fourth class city having a population of more than two thousand eight hundred but less than three thousand one hundred inhabitants in a county of the third classification with a township form of government having a population of more than eight thousand four hundred but less than nine thousand inhabitants**;**

(15) Any fourth class city with a population of more than four hundred seventy but less than five hundred twenty inhabitants located in a county of the third classification with a population of more than fifteen thousand nine hundred but less than sixteen thousand inhabitants;

(16) Any third class city with a population of more than three thousand eight hundred but less than four thousand inhabitants located in a county of the third classification with a population of more than fifteen thousand nine hundred but less than sixteen thousand inhabitants;

(17) Any fourth class city with a population of more than two thousand four hundred but less than two thousand six hundred inhabitants located in a county of the first classification without a charter form of government with a population of more than fifty-five thousand but less than sixty thousand inhabitants; or

(18) Any fourth class city with a population of more than two thousand five hundred but less than two thousand six hundred inhabitants located in a county of the third classification with a population of more than nineteen thousand one hundred but less than nineteen thousand two hundred inhabitants; or

(19) Any county of the second classification with a population of more than forty-four thousand but less than fifty thousand inhabitants;

may impose a tax on the charges for all sleeping rooms paid by the transient guests of hotels, motels, bed and breakfast inns and campgrounds and any docking facility which rents slips to recreational boats which are used by transients for sleeping, which shall be at least two percent, but not more than five percent per occupied room per night, except that such tax shall not become effective unless the governing body of the city or county submits to the voters of the city or county at a state general, primary or special election, a proposal to authorize the governing body of the city or county to impose a tax pursuant to the provisions of this section and section 67.1362. The tax authorized by this section and section 67.1362 shall be in addition to any charge paid to the owner or operator and shall be in addition to any and all taxes imposed by law and the proceeds of such tax shall be used by the city or county solely for funding the promotion of tourism. Such tax shall be stated separately from all other charges and taxes.

67.1775. AUTHORIZES LOCAL SALES TAX IN CERTAIN COUNTIES AND CITIES TO PROVIDE COMMUNITY SERVICES FOR CHILDREN — ESTABLISHES FUND. — 1. The governing body of **a city not within a county, or** any county of the first classification with a charter form of government **[**and**] with** a population **[**of two hundred thousand but less than three hundred thousand**] not less than nine hundred thousand inhabitants, or any county of the first classification with a charter form of government with a population not less than two hundred thousand inhabitants and not more than six hundred thousand inhabitants, or any noncharter county of the first classification with a population not less than one hundred seventy thousand and not more than two hundred thousand inhabitants, or any noncharter county of the first classification with a population not less than eighty thousand and not more than eighty-three thousand inhabitants, or any third classification county with a population not less than twenty-eight thousand and not more than thirty thousand inhabitants, or any county of the third classification with a population not less than nineteen thousand five hundred and not more than twenty thousand inhabitants** may, after voter approval pursuant to this section, levy a sales tax not to exceed one-quarter of

a cent in the county for the purpose of providing **services described in section 210.861, RSMo, including** counseling, family support, and temporary residential services to persons **[**eighteen**]** **nineteen** years of age or less. The question shall be submitted to the qualified voters of the county at a county or state general, primary or special election upon the motion of the governing body of the county **or** upon the petition of eight percent of the qualified voters of the county determined on the basis of the number of votes cast for governor in such county at the last gubernatorial election held prior to the filing of the petition. The election officials of the county shall give legal notice as provided in chapter 115, RSMo. The question shall be submitted in substantially the following form:

Shall ..... County be authorized to levy a sales tax of **..... (not to exceed** one-quarter of a cent**)** in the county for the purpose of establishing a community children's services fund for the purpose of providing services to protect the well-being and safety of children and youth **[**eighteen**]** **nineteen** years of age or less and to strengthen families?

[ ] YES [ ] NO

If a majority of the votes cast on the question by the qualified voters voting thereon are in favor of the question, then the tax shall be levied and collected as otherwise provided by law. If a majority of the votes cast on the question by the qualified voters voting thereon are opposed to the question, then the tax shall not be levied unless and until the question is again submitted to the qualified voters of the county and a majority of such voters are in favor of such a tax, and not otherwise.

2. All revenues generated by the tax prescribed in this section shall be deposited in the county treasury to the credit of a special "Community Children's Services Fund". Such fund shall be administered by a board of directors, established pursuant to section 210.861, RSMo.

67.1922. WATER QUALITY, INFRASTRUCTURE AND TOURISM, SALES TAX AUTHORIZED FOR CERTAIN COUNTIES — BALLOT LANGUAGE. — 1. The governing body of any county containing any part of a Corps of Engineers lake with a shoreline of at least seven hundred miles and not exceeding a shoreline of nine hundred miles or the governing body of any county which borders on or which contains part of a lake with not less than one hundred miles of shoreline may impose by order a sales tax, not to exceed one and one-half percent, on all retail sales made in such county which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo, for the purpose of promoting water quality, infrastructure and tourism through programs designed to affect the economic development of the county. The tax authorized by this section shall be in addition to any and all other sales taxes allowed by law; except that no order imposing a sales tax pursuant to the provisions of this section shall be effective unless the governing body of the county submits to the voters of the county, at a municipal or state primary, general or special election, a proposal to authorize the governing body of the county to impose a tax.

2. The ballot of submission shall contain, but need not be limited to, the following language:

Shall the county of ..... (county's name) impose a county-wide sales tax of ..... (insert percent) for the purpose of creating and implementing water quality, infrastructure and tourism programs affecting economic development in the county as provided by law?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

If a majority of the votes cast on the proposal by the qualified voters of the county voting thereon are in favor of the proposal, then the order shall become effective on the first day of the second calendar quarter after the director of revenue receives notice of adoption of the tax. If the proposal receives less than the required majority, then the governing body

of the county shall have no power to impose the sales tax authorized pursuant to this section unless and until the governing body shall again have submitted another proposal to authorize the governing body to impose the sales tax authorized by this section and such proposal is approved by the required majority of the qualified voters of the county voting on such proposal.

67.1925. SPECIAL TRUST FUND CREATED. — 1. All revenue received by a county from the tax authorized pursuant to the provisions of section 67.1922 shall be deposited in a special trust fund, and be used solely for the purposes specified in the proposal submitted pursuant to subsection 1 of section 67.1922 for so long as the tax shall remain in effect.

2. Once the tax authorized pursuant to the provisions of section 67.1922 is abolished or terminated by any means, all funds remaining in the special trust fund shall be used solely for activities initiated with revenues raised by the tax authorized. Any funds in such special trust fund which are not needed for current expenditures may be invested by the governing body in accordance with applicable laws relating to the investment of other county funds.

3. All sales taxes collected by the director of revenue pursuant to section 67.1922 less one percent for cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, RSMo, shall be deposited in a special trust fund, which is hereby created, to be known as the "Economic Development Sales Tax Trust Fund". The moneys in the economic development sales tax trust fund shall not be deemed to be state funds and shall not be commingled with any funds of the state. The director of revenue shall keep accurate records of the amount of money in the trust and which was collected in each county imposing a sales tax pursuant to this section, and the records shall be open to inspection by officers of the county and the public. Not later than the tenth day of each month the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the county which levied the tax; such funds shall be deposited with the county treasurer of each such county, and all expenditures of funds arising from the local economic development trust fund shall be by an appropriation act to be enacted by the governing body of such county. Expenditures may be made from the fund for any purposes authorized pursuant to subsection 1 of section 67.1922, provided water quality programs receive one third, infrastructure programs receive one third and tourism programs receive one third; and provided no more than five percent of the total fund shall be used annually for administration costs.

4. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credit any county for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such counties. If any county abolishes the tax, the county shall notify the director of revenue of the action at least ninety days prior to the effective date of the repeal and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the tax in such county, the director of revenue shall remit the balance in the account to the county and close the account of that county. The director of revenue shall notify each county of each instance of any amount refunded or any check redeemed from receipts due the county.

5. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed pursuant to section 67.1922.

67.1928. AUTHORIZED APPROPRIATIONS FROM SPECIAL TRUST FUND. — For purposes of sections 67.1922 to 67.1940, appropriations from the economic development sales tax trust fund may be used for the following:

(1) Comprehensive programs encouraging the prevention, control and abatement of water pollution within the county;

(2) Cooperating with agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries in furtherance of the purposes of sections 644.006 to 644.141, RSMo;

(3) Encouraging, participating in or conducting studies, investigations and research relating to water pollution causes and prevention pursuant to sections 644.006 to 644.141, RSMo;

(4) Collecting and disseminating information relating to water pollution and the prevention, control and abatement, pursuant to sections 644.006 to 644.141, RSMo;

(5) Developing, implementing and carrying out comprehensive programs for encouragement, promotion and necessary construction for the orderly development of water and sewage systems and infrastructure, including roads interconnecting to state highways within the county;

(6) Formulating programs for the promotion of fishing and hunting areas, historical sites, vacation regions and areas of historic or scenic interest;

(7) Cooperating with civic groups and local, state and federal departments and agencies, and departments and agencies of other states in encouraging educational tourism and developing programs therefor;

(8) Publishing tourist promotional material such as brochures and booklets; and

(9) Promoting tourism in the county by any means including but not limited to articles and advertisements in magazines, newspapers, radio, television, internet and travel publications and by establishing promotional exhibitions at travel shows and similar exhibitions.

67.1931. INDEBTEDNESS AUTHORIZED TO ACCOMPLISH PURPOSES OF CERTAIN TAXES. — 1. The governing body of the county may borrow money and issue notes, certificates or other evidences of indebtedness to accomplish the purposes pursuant to sections 67.1922 to 67.1940.

2. Nothing in sections 67.1922 to 67.1940 shall be construed to authorize the county to establish or enforce any regulation or rule to promote any program which is in conflict with any federal or state law or regulation applicable to the same subject matter.

3. Nothing in sections 67.1922 to 67.1940 shall be construed to require the county to enforce Missouri's environmental laws when the obligation and authority for enforcement rests with the department of natural resources.

67.1934. REPEAL OF TAX, SUBMITTED TO VOTERS, BALLOT LANGUAGE. — The governing body of the county, when presented with a petition, signed by at least twenty percent of the registered voters in the county that voted in the last gubernatorial election, calling for an election to repeal the tax shall submit the question to the voters using the same procedure by which the imposition of the tax was voted. The ballot of submission shall be in substantially the following form:

Shall ..... County, Missouri, repeal the ..... percent economic development sales tax for promoting water quality, infrastructure and tourism now in effect in the county?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

If a majority of the votes cast on the proposal by the qualified voters of the county voting thereon are in favor of repeal, that repeal shall become effective December thirty-first of the calendar year in which such repeal was approved or after the repayment of the county's indebtedness incurred pursuant to sections 67.1922 to 67.1940, whichever occurs later.

67.1937. SAFEKEEPING OF COUNTY PERMANENT RECORDS — ACCOUNTING RECORDS AND ANNUAL AUDIT. — The governing body of the county shall provide for the proper and safe keeping of its permanent records. It shall keep a true and accurate account of its receipts and an annual audit shall be made of its books, records and accounts.

67.1940. DONATION OF PROPERTY TO COUNTY. — 1. Any person desiring to donate property for the benefit of the county may vest title to the property so donated in the county, and the county shall hold and control the property so received and accepted according to the terms of the deed, gift, devise or bequest of the property, and shall be a trustee of the property and shall take title to all property it may acquire in the name of the county and shall control the property, for purposes pursuant to sections 67.1922 to 67.1940.

2. The governing body of the county may accept gifts, contributions, donations, loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which funds shall not be expended for other than the purposes pursuant to sections 67.1922 to 67.1940.

67.1950. DEFINITIONS. — As used in sections 67.1950 to 67.1977, the following terms shall mean:

(1) "Board of directors" or "board", tourism community enhancement district board of directors established pursuant to section 67.1956;

(2) "Convention and visitors bureau", a not-for-profit corporation established and operated for the sole purpose of promoting convention and other tourism activities in the county, city, town or village;

(3) "Destination marketing organization", a not-for-profit corporation established for the purpose of tourism marketing and designated by the division of tourism as such;

(4) "District", a tourism community enhancement district;

(5) "Funeral services", all labor and services used in preparation for, in the course of or completion of a funeral, including the sale of caskets and vaults.

67.1953. TOURISM COMMUNITY ENHANCEMENT DISTRICT AUTHORIZED FOR CERTAIN COUNTIES — BOUNDARIES — PROCEDURE. — 1. The governing body of any county containing any part of a Corps of Engineers lake with a shoreline of at least seven hundred miles and not exceeding a shoreline of nine hundred miles or any city, town or village located in a county containing any part of a Corps of Engineers lake with a shoreline of at least seven hundred miles and not exceeding a shoreline of nine hundred miles, may create a tourism community enhancement district in the manner provided in this section and, upon establishment, each such district shall be a body corporate and politic of the state. If such district is established, it shall consist of the boundaries delineated in the petition filed with the governing body of a county, city, town or village pursuant to this section, and such boundaries may extend beyond the boundaries of the county, city, town or village creating such district, but shall not overlap with the boundaries of any previously incorporated tourism community enhancement district.

2. The governing body of a county, city, town or village may create a district when a proper petition has been signed by at least two percent of the registered voters of a county, city, town or village within such proposed district. The petition, in order to

become effective, shall be filed with the clerk of the county, city, town or village that includes a majority of the area within the proposed district. A proper petition for the creation of a district shall set forth the boundaries of the proposed district and the maximum proposed sales tax rate up to one percent.

3. The boundaries of the proposed district shall be described by metes and bounds, streets or other sufficiently specific description.

4. The plans and specifications for the district shall be filed with the clerk, as applicable, and shall be open for public inspection. Such clerk shall thereupon, at the direction of the governing body, publish notice that the governing body will conduct a hearing to consider the proposed district. Such notice shall be published in a newspaper of general circulation at least twice not more than thirty days and not less than seven days before the hearing and shall state the name for the district, the date, time and place of such hearing, the boundaries of the district, and that written or oral objections will be considered at the hearing.

5. If the governing body, following the hearing, decides to establish the proposed district, it shall adopt an order or ordinance to that effect. The order or ordinance shall contain the following:

(1) The name of the district;

(2) A statement that a tourism community enhancement district has been established; and

(3) The creation of a board of directors and enumeration of its duties and responsibilities, as provided by section 67.1956.

67.1956. BOARD OF DIRECTORS, MEMBERS, TERMS, DUTIES. — 1. In each tourism community enhancement district established pursuant to section 67.1953, there shall be a board of directors, to initially consist of not less than five members. One member shall be selected by the governing body of the city, town or village, with the largest population, at the inception of the district, within the district. One member shall be selected by the governing body of the city, town or village, with the second largest population, at the inception of the district, within the district, if such a city, town or village exists in the district. If no such city, town or village exists in the district then one member shall be selected by the board of directors of the district from the unincorporated area of such district. Two members shall be selected by the largest convention and visitor's bureau or similar organization, at the inception of the district, within the district. One member shall be selected by the destination marketing organization of the second largest county, city, town or village, at the inception of the district, within the district. Of the members first selected, the two members from the city, town or village shall be selected for a term of three years, the two members from the convention and visitor's bureau shall be selected for a term of two years, and the member from the destination marketing organization of the second largest city shall be selected for a term of one year. Thereafter, each member selected shall serve a three-year term. Every member shall be a resident of the district. All members shall serve without compensation. Any vacancy within the board shall be filled in the same manner as the person who vacated the position was selected, with the new person serving the remainder of the term of the person who vacated the position. The board shall elect its own treasurer, secretary and such other officers as it deems necessary and expedient, and it may make such rules, regulations, and bylaws to carry out its duties pursuant to sections 67.1950 to 67.1977.

2. Any time a district is expanded by either an unincorporated or incorporated area, the board shall be expanded by two members. One member shall be appointed by the governing body of the incorporated area added to the district or by the board of directors of the district for the unincorporated area added to the district and one member shall be appointed by the governing body of the city, town or village with the largest population

at the inception of the district for the first expansion and every odd numbered expansion thereafter, or by the convention and visitor's bureau or similar entity of the largest city, town or village, at the inception of the district, for the second expansion and every even numbered expansion thereafter.

3. The board, on behalf of the district, may:

(1) Cooperate with public agencies and with any industry or business located within the district in the implementation of any project;

(2) Enter into any agreement with any public agency, person, firm, or corporation to implement any of the provisions of sections 67.1950 to 67.1977;

(3) Contract and be contracted with, and sue and be sued; and

(4) Accept gifts, grants, loans, or contributions from the United States of America, the state, any political subdivision, foundation, other public or private agency, individual, partnership or corporation on behalf of the tourism enhancement district community.

67.1959. SALES TAX IMPOSED, WHEN — SUBMITTED TO VOTERS, BALLOT LANGUAGE. — 1. The board, by a majority vote, may submit to the residents of such district a tax of not more than one percent on all retail sales, except sales of new or used motor vehicles, trailers, boats, or other outboard motor and sales of funeral services, made within the district which are subject to taxation pursuant to the provisions of sections 144.010 to 144.525, RSMo. Upon the written request of the board to the election authority of the county in which a majority of the area of the district is situated, such election authority shall submit a proposition to the residents of such district at a municipal or statewide primary or general election, or at a special election called for that purpose. Such election authority shall give legal notice as provided in chapter 115, RSMo.

2. Such proposition shall be submitted to the voters of the district in substantially the following form at such election:

Shall the Tourism Community Enhancement District impose a sales tax of ..... (insert amount) for the purpose of promoting tourism and community enhancements in the (name of county, city, town or village that includes a majority of the area within the proposed district) ..... Tourism Community Enhancement District?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

If a majority of the votes cast on the proposal by the qualified voters of the proposed district voting thereon are in favor of the proposal, then the order shall become effective on the first day of the second calendar quarter after the director of revenue receives notice of adoption of the tax. If the proposal receives less than the required majority, then the board shall have no power to impose the sales tax authorized pursuant to this section unless and until the board shall again have submitted another proposal to authorize the board to impose the sales tax authorized by this section and such proposal is approved by the required majority of the qualified voters of the district.

67.1962. SPECIAL TRUST FUND CREATED. — 1. All revenue received by a district from the tax authorized pursuant to the provisions of section 67.1959 shall be deposited in a special trust fund, and be used solely for the purposes specified in the proposal submitted pursuant to subsection 1 of section 67.1959 for so long as the tax shall remain in effect.

2. All sales taxes collected by the director of revenue pursuant to section 67.1959 less one percent for cost of collection which shall be deposited in the state's general revenue fund after payment of premiums for surety bonds as provided in section 32.087, RSMo, shall be deposited in a special trust fund, which is hereby created, to be known as the "Tourism Community Enhancement District Sales Tax Trust Fund". The moneys in the tourism community enhancement district sales tax trust fund shall not be deemed to be

state funds and shall not be commingled with any funds of the state. The director of revenue shall keep accurate records of the amount of money in the trust and which was collected in each district imposing a sales tax pursuant to this section, and the records shall be open to inspection by officers of the county, city, town or village and the public. Not later than the tenth day of each month the director of revenue shall distribute all moneys deposited in the trust fund during the preceding month to the board which levied the tax; such funds shall be deposited with the board treasurer of each such district.

3. The director of revenue may authorize the state treasurer to make refunds from the amounts in the trust fund and credit any district for erroneous payments and overpayments made, and may redeem dishonored checks and drafts deposited to the credit of such district. If any district abolishes the tax, the district shall notify the director of revenue of the action at least ninety days prior to the effective date of the repeal and the director of revenue may order retention in the trust fund, for a period of one year, of two percent of the amount collected after receipt of such notice to cover possible refunds or overpayment of the tax and to redeem dishonored checks and drafts deposited to the credit of such accounts. After one year has elapsed after the effective date of abolition of the tax in such district, the director of revenue shall remit the balance in the account to the district and close the account of that district. The director of revenue shall notify each district of each instance of any amount refunded or any check redeemed from receipts due the district.

4. Except as modified in this section, all provisions of sections 32.085 and 32.087, RSMo, shall apply to the tax imposed pursuant to section 67.1959.

67.1965. COUNTY COLLECTOR TO COLLECT TAX AT DISCRETION OF THE BOARD — RULES. — Notwithstanding the provisions of section 67.1962, if the board chooses, on and after the effective date of any tax authorized pursuant to section 67.1959, the board may enter into an agreement with either the county collector of the county where the majority of the area of the district is situated for the purpose of collecting the tax or the city collector of the largest city existing at the inception of the district. The tax to be collected by the county or city collector shall be remitted to the board of the district not later than thirty days following the end of any calendar quarter. The governing body of the county or city shall adopt rules and regulations for the collection and administration of the tax. The county or city collector shall retain on behalf of the county or city one percent for cost of collection.

67.1968. EXPENDITURE OF SALES TAX REVENUE, CONDITIONS. — Expenditures may be made from the tourism community enhancement district sales tax trust fund or moneys collected pursuant to section 67.1965 for any purposes authorized pursuant to subsection 1 of section 67.1959, provided as follows:

(1) Ten percent of the revenues shall be used for education purposes. The board shall transmit those revenues to the school district or districts within the district, on a basis of revenue collected within each school district. These revenues shall not be used in any manner with respect to the calculation of the state school aid pursuant to chapter 163, RSMo;

(2) Ten percent of the revenues collected from the tax authorized by this section shall be used by the board for senior citizen or youth or community enhancement purposes within the district. The board shall distribute these revenues to the cities, towns and villages based upon the amount of sales tax collected within each city, town or village and the portion of the revenues not attributable to any city, town or village shall be distributed at the discretion of the board;

(3) Seventy-five percent of the revenues shall be used by the board for marketing, advertising and promotion of tourism. The district shall enter into an agreement with a

not-for-profit organization providing local support services, including but not limited to visitor's centers, to conduct and administer public relations, sales and marketing of tourism on behalf of the district to enhance the economic health of the district. Such marketing, advertising and promotional activities shall be developed into a comprehensive marketing plan, for the benefit of the district;

(4) Two percent of the revenues shall be distributed among each destination marketing organization located within each school district or districts within the district based upon the amount of sales tax collected within each school district;

(5) Two percent of the revenues shall be transmitted to the not-for-profit organization conducting and administering the marketing plan within the district for purposes of administering the marketing plan.

67.1971. REDUCTION OF LIABILITY FOR ENTITIES REMITTING THE SALES TAX. — All entities remitting the sales tax authorized pursuant to section 67.1959 shall have their liability reduced by an amount equal to twenty-five percent of any taxes collected and remitted pursuant to sections 94.802 to 94.805, RSMo.

67.1974. EXPANSION OF DISTRICT BOUNDARIES, PROCEDURE. — The boundaries of the district may be expanded by the addition of either an adjacent unincorporated or incorporated area. Upon presentation of a petition to the board signed by two percent of registered voters residing in either the unincorporated or incorporated area adjacent to the district. If the board determines that expansion is in the best interest of the current district, then the board shall give written notice to the election authority in the county in which the unincorporated or incorporated area is located to call an election. The election authority shall submit a proposition to the residents of the unincorporated or incorporated area at a municipal or state primary or general election, or at a special election called for that purpose. Such election authority shall give notice as provided in chapter 115, RSMo. The proposition shall be submitted to voters in the unincorporated or incorporated area in substantially the following manner:

Shall the (unincorporated or incorporated area) of ..... (county, city, town or village) be included in the ..... (name of district) Tourism Community Enhancement District and any sales tax imposed by the ..... (name of district) Tourism Community Enhancement District also be imposed in the ..... (unincorporated or incorporated area) of ..... (county, city, town or village)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

If a majority of the votes cast on the proposal by the qualified voters of the unincorporated or incorporated area voting thereon are in favor of the proposal, then the order shall become effective on the first day of the second calendar quarter after the director of revenue receives notice of adoption of the tax. If the proposal receives less than the required majority, then the board shall have no power to impose the sales tax authorized pursuant to this section unless and until the board shall again have submitted another proposal to authorize the expansion of the current district and such proposal is approved by the required majority of the qualified voters of the unincorporated or incorporated area voting on such proposal.

67.1977. DISSOLUTION AND REPEAL OF THE TAX, PROCEDURE. — 1. The board, when presented with a petition signed by at least one-third of the registered voters in the district that voted in the last gubernatorial election, calling for an election to dissolve and repeal the tax shall submit the question to the voters using the same procedure by which the imposition of the tax was voted. The ballot of submission shall be in substantially the following form:

Shall ..... (name of district) dissolve and repeal the ..... (insert amount) percent tourism community enhancement district sales tax now in effect in the ..... (name of district)?

[ ] YES [ ] NO

If you are in favor of the question, place an "X" in the box opposite "Yes". If you are opposed to the question, place an "X" in the box opposite "No".

If a majority of the votes cast on the proposal by the qualified voters of the district voting thereon are in favor of repeal, that repeal shall become effective December thirty-first of the calendar year in which such repeal was approved or after the repayment of the district's indebtedness incurred pursuant to sections 67.1950 to 67.1962, whichever occurs later.

2. No dissolution of such tourism community enhancement district shall invalidate or affect any right accruing to such tourism community enhancement district or to any person or invalidate or affect any contract entered into or imposed on such tourism community enhancement district.

3. Whenever the board of directors dissolves any such tourism community enhancement district, the governing body of the city with the largest population at inception of the district, shall appoint a person to act as trustee for the district so dissolved, and such trustee, before entering upon the discharge of his duties, shall take and subscribe an oath that he will faithfully discharge the duties of his office, and shall give bond with sufficient security to be approved by the governing body of the city, to the use of such dissolved tourism community enhancement district, conditioned for the faithful discharge of this duty. The trustee may prosecute and defend to final judgment all suits instituted by or against the district, collect all moneys due the district, liquidate all lawful demands against the district, and for that purpose shall sell any property belonging to such district, or so much thereof as may be necessary, and generally to do all acts requisite to bring to a speedy close all the affairs of the district.

4. When the trustee has closed the affairs of the tourism community enhancement district, and has paid all debts due by such district, he shall pay over to the treasurer of the school district, or school districts within the district, all money remaining in his hands, based upon the amount of sales taxes collected in each school district in the prior calendar year, and take receipts therefor, and deliver to the governing body of the city with the largest population at inception of the district, all books, papers, records and deeds belonging to the dissolved district. These revenues shall not be used in any manner with respect to the calculation of the state school aid pursuant to chapter 163, RSMo.

67.1978. ANNUAL AUDIT REQUIRED. — The board of directors shall have an annual audit performed by a certified professional accountant or accounting firm. The board of directors shall provide a copy of the annual audit to the governing bodies within the district.

67.1979. REMOVAL OF BOARD MEMBERS. — Members of the board of directors may be removed by two-thirds vote of the appointing governing body.

94.812. RETAILERS LIABLE FOR TAX, COLLECTION AND RETURN OF TAXES (BRANSON). — Every retailer, vendor, operator, and other person who sells or provides goods and services subject to tax under section 94.802 or section 94.805 shall be liable and responsible for the collection and payment of taxes due under these sections and shall make a return and remit such taxes to the municipality or its designee, at such times and in such manner as the governing body of the municipality shall prescribe. The collection of the taxes imposed by these sections shall be computed in accordance with schedules or systems approved by the governing body of the municipality. **[**Such schedules or systems shall be designed so that no such tax is charged on any sale of one dollar or less.**]**

210.861. BOARD OF DIRECTORS, TERM, EXPENSES, ORGANIZATION — POWERS — FUNDS, EXPENDITURE, PURPOSE, RESTRICTIONS. — 1. When the tax prescribed by section 210.860 **or section 67.1775, RSMo,** is established, the governing body of the county shall appoint a board of directors consisting of nine members, who shall be residents of the county. All board members shall be appointed to serve for a term of three years, except that of the first board appointed, three members shall be appointed for one-year terms, three members for two-year terms and three members for three-year terms. Board members may be reappointed. In a city not within a county, or **[**in a county of the first classification with a charter form of government and a population of at least two hundred thousand that adjoins a county of the first classification with a charter form of government and a population of at least nine hundred thousand,**] any county of the first classification with a charter form of government with a population not less than nine hundred thousand inhabitants, or any county of the first classification with a charter form of government with a population not less than two hundred thousand inhabitants and not more than six hundred thousand inhabitants, or any noncharter county of the first classification with a population not less than one hundred seventy thousand and not more than two hundred thousand inhabitants, or any noncharter county of the first classification with a population not less than eighty thousand and not more than eighty-three thousand inhabitants, or any third classification county with a population not less than twenty-eight thousand and not more than thirty thousand inhabitants, or any county of the third classification with a population not less than nineteen thousand five hundred and not more than twenty thousand inhabitants** the members of the community mental health board of trustees appointed pursuant to the provisions of sections 205.975 to 205.990, RSMo, shall be the board members for the community children's services fund. The directors shall not receive compensation for their services, but may be reimbursed for their actual and necessary expenses.

2. The board shall elect a chairman, vice chairman, treasurer, and such other officers as it deems necessary for its membership. Before taking office, the treasurer shall furnish a surety bond, in an amount to be determined and in a form to be approved by the board, for the faithful performance of his duties and faithful accounting of all moneys that may come into his hands. The treasurer shall enter into the surety bond with a surety company authorized to do business in Missouri, and the cost of such bond shall be paid by the board of directors. The board shall administer all funds generated pursuant to section 210.860 **or section 67.1775, RSMo,** in a manner consistent with this section.

3. The board may contract with public or not-for-profit agencies licensed or certified where appropriate to provide qualified services and may place conditions on the use of such funds. The board shall reserve the right to audit the expenditure of any and all funds. The board and any agency with which the board contracts may establish eligibility standards for the use of such funds and the receipt of services. No member of the board shall serve on the governing body, have any financial interest in, or be employed by any agency which is a recipient of funds generated pursuant to section 210.860 **or section 67.1775, RSMo**.

4. Revenues collected and deposited in the community children's services fund may be expended for the purchase of the following services:

(1) Up to thirty days of temporary shelter for abused, neglected, runaway, homeless or emotionally disturbed youth; respite care services; and services to unwed mothers;

(2) Outpatient chemical dependency and psychiatric treatment programs; counseling and related services as a part of transitional living programs; home-based and community-based family intervention programs; unmarried parent services; crisis intervention services, inclusive of telephone hot lines; and prevention programs which promote healthy lifestyles among children and youth and strengthen families;

(3) Individual, group, or family professional counseling and therapy services; psychological evaluations; and mental health screenings.

5. Revenues collected and deposited in the community children's services fund may not be expended for inpatient medical, psychiatric, and chemical dependency services, or for transportation services.

SECTION 1. ADDITIONAL FEE FOR SHORT-TERM RENTALS OF MOTOR VEHICLES, CHECK-OFF BOX PROVIDED (PLATTE COUNTY). — 1. Any county of the first classification without a charter form of government with a population of more than fifty-seven thousand inhabitants but less than sixty thousand inhabitants may, by ordinance or order of the governing body of the county and approved by the majority of the qualified voters of the county, require each contract covering the rental of a motor vehicle which is rented within such county on a short-term basis to provide a box which the renter may use to indicate that a one dollar fee may be added to the contract. For purposes of this section "short-term" shall mean a rental contract of less than one month. The fee shall be collected by any business located in such county which rents motor vehicles on a short-term basis upon payment of the contract by the customer.

2. The county collector of such county may provide for collection of such fee on forms provided by the county collector. Failure to collect and remit such fees by any business located in such county which rents motor vehicles on a short-term basis shall be subject to a penalty of five percent per month together with interest as determined by section 32.065, RSMo.

3. All revenues collected from the imposition of the fee as authorized by this section shall be used solely for tourism purposes within such county.

Approved July 12, 2001

SB 345 [HCS SB 345]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows St. Peters to remove weeds or trash from property after providing notice.

AN ACT to repeal sections 71.285, 82.300 and 347.189, RSMo 2000, relating to property maintenance and to enact in lieu thereof four new sections relating to the same subject.

SECTION

A. Enacting clause.
71.285. Weeds or trash, city may cause removal and issue tax bill, when — certain cities may order abatement and remove weeds or trash, when — section not to apply to certain cities, when — city official may order abatement in certain cities — removal of weeds or trash, costs.
82.300. Certain cities may enact ordinances, purposes, punishments (including Kansas City).
263.232. Eradication and control of the spread of teasel and kudzu vine.
347.189. Requires filing property control affidavit in certain cities, including Kansas City.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 71.285, 82.300 and 347.189, RSMo 2000, are repealed and four new sections enacted in lieu thereof, to be known as sections 71.285, 82.300, 263.232 and 347.189, to read as follows:

71.285. WEEDS OR TRASH, CITY MAY CAUSE REMOVAL AND ISSUE TAX BILL, WHEN — CERTAIN CITIES MAY ORDER ABATEMENT AND REMOVE WEEDS OR TRASH, WHEN —

SECTION NOT TO APPLY TO CERTAIN CITIES, WHEN — CITY OFFICIAL MAY ORDER ABATEMENT IN CERTAIN CITIES — REMOVAL OF WEEDS OR TRASH, COSTS. — 1. Whenever weeds or trash, in violation of an ordinance, are allowed to grow or accumulate, as the case may be, on any part of any lot or ground within any city, town or village in this state, the owner of the ground, or in case of joint tenancy, tenancy by entireties or tenancy in common, each owner thereof, shall be liable. The marshal or other city official as designated in such ordinance shall give a hearing after ten days' notice thereof, either personally or by United States mail to the owner or owners, or his **or her** or their agents, or by posting such notice on the premises; thereupon, the marshal or other designated city official may declare the weeds or trash to be a nuisance and order the same to be abated within five days; and in case the weeds or trash are not removed within the five days, the marshal or other designated city official shall have the weeds or trash removed, and shall certify the costs of same to the city clerk, who shall cause a special tax bill therefor against the property to be prepared and to be collected by the collector, with other taxes assessed against the property; and the tax bill from the date of its issuance shall be a first lien on the property until paid and shall be prima facie evidence of the recitals therein and of its validity, and no mere clerical error or informality in the same, or in the proceedings leading up to the issuance, shall be a defense thereto. Each special tax bill shall be issued by the city clerk and delivered to the collector on or before the first day of June of each year. Such tax bills if not paid when due shall bear interest at the rate of eight percent per annum. Notwithstanding the time limitations of this section, any city, town or village located in a county of the first classification may hold the hearing provided in this section four days after notice is sent or posted, and may order at the hearing that the weeds or trash shall be abated within five business days after the hearing and if such weeds or trash are not removed within five business days after the hearing, the order shall allow the city to immediately remove the weeds or trash pursuant to this section. Except for lands owned by a public utility, rights-of-way, and easements appurtenant or incidental to lands controlled by any railroad, the department of transportation, the department of natural resources or the department of conservation, the provisions of this subsection shall not apply to any city with a population of at least seventy thousand inhabitants which is located in a county of the first classification with a population of less than one hundred thousand inhabitants which adjoins a county with a population of less than one hundred thousand inhabitants that contains part of a city with a population of three hundred fifty thousand or more inhabitants, any city with a population of one hundred thousand or more inhabitants which is located within a county of the first classification that adjoins no other county of the first classification, or any city, town or village located within a county of the first classification with a charter form of government with a population of nine hundred thousand or more inhabitants, or any city with a population of three hundred fifty thousand or more inhabitants which is located in more than one county, or the city of St. Louis, where such city, town or village establishes its own procedures for abatement of weeds or trash, and such city may charge its costs of collecting the tax bill, including attorney fees, in the event a lawsuit is required to enforce a tax bill.

2. Except as provided in subsection 3 of this section, if weeds are allowed to grow, or if trash is allowed to accumulate, on the same property in violation of an ordinance more than once during the same growing season in the case of weeds, or more than once during a calendar year in the case of trash, in any city with a population of three hundred fifty thousand or more inhabitants which is located in more than one county, in the city of St. Louis **[**or**],** in any city, town or village located in a county of the first classification with a charter form of government with a population of nine hundred thousand or more inhabitants **or in any fourth class city located in a county of the first classification with a charter form of government and a population of less than three hundred thousand**, the marshal or other designated city official may order that the weeds or trash be abated within five business days after notice is sent to or posted on the property. In case the weeds or trash are not removed within the five days, the marshal or other designated city official may have the weeds or trash removed and the cost of the same shall be billed in the manner described in subsection 1 of this section.

3. If weeds are allowed to grow, or if trash is allowed to accumulate, on the same property in violation of an ordinance more than once during the same growing season in the case of weeds, or more than once during a calendar year in the case of trash, in any city with a population of three hundred fifty thousand or more inhabitants which is located in more than one county, in the city of St. Louis **[**or**],** in any city, town or village located in a county of the first classification with a charter form of government with a population of nine hundred thousand or more inhabitants **or in any fourth class city located in a county of the first classification with a charter form of government and a population of less than three hundred thousand**, the marshal or other designated official may, without further notification, have the weeds or trash removed and the cost of the same shall be billed in the manner described in subsection 1 of this section. The provisions of subsection 2 and this subsection do not apply to lands owned by a public utility and lands, rights-of-way, and easements appurtenant or incidental to lands controlled by any railroad.

4. The provisions of this section shall not apply to any city with a population of one hundred thousand or more inhabitants which is located within a county of the first classification that adjoins no other county of the first classification where such city establishes its own procedures for abatement of weeds or trash, and such city may charge its costs of collecting the tax bill, including attorney fees, in the event a lawsuit is required to enforce a tax bill.

82.300. CERTAIN CITIES MAY ENACT ORDINANCES, PURPOSES, PUNISHMENTS (INCLUDING KANSAS CITY). — 1. Any city with a population of **[**three**] four** hundred **[**fifty**]** thousand or more inhabitants which is located in more than one county may enact all needful ordinances for preserving order, securing persons or property from violence, danger and destruction, protecting public and private property and for promoting the general interests and ensuring the good government of the city, and for the protection, regulation and orderly government of parks, public grounds and other public property of the city, both within and beyond the corporate limits of such city; and to prescribe and impose, enforce and collect fines, forfeitures and penalties for the breach of any provisions of such ordinances and to punish the violation of such ordinances by fine or imprisonment, or by both fine and imprisonment; but no fine shall exceed five hundred dollars nor imprisonment exceed twelve months for any such offense, except as provided in subsection 2 of this section.

2. Any city with a population of **[**three**] four** hundred **[**fifty**]** thousand or more inhabitants which is located in more than one county which operates a publicly owned treatment works in accordance with an approved pretreatment program pursuant to the federal Clean Water Act, 33 U.S.C. 1251, et seq. and chapter 644, RSMo, may enact all necessary ordinances which require compliance by an industrial user with any pretreatment standard or requirement. Such ordinances may authorize injunctive relief or the imposition of a fine of at least one thousand dollars but not more than five thousand dollars per violation for noncompliance with such pretreatment standards or requirements. For any continuing violation, each day of the violation shall be considered a separate offense.

3. Any city with a population of more than four hundred thousand inhabitants may enact all needful ordinances to protect public and private property from illegal and unauthorized dumping and littering, and to punish the violation of such ordinances by a fine not to exceed one thousand dollars or by imprisonment not to exceed twelve months for each offense, or by both such fine and imprisonment.

4. Any city with a population of more than four hundred thousand inhabitants may enact all needful ordinances to protect public and private property from nuisance and property maintenance code violations, and to punish the violation of such ordinances by a fine not to exceed one thousand dollars or by imprisonment not to exceed twelve months for each offense, or by both such fine and imprisonment.

263.232. ERADICATION AND CONTROL OF THE SPREAD OF TEASEL AND KUDZU VINE. — It shall be the duty of any person or persons, association of persons, corporations, partnerships, the state highways and transportation commission, any state department, any state agency, the county commissions, the township boards, school boards, drainage boards, the governing bodies of incorporated cities, railroad companies and other transportation companies or their authorized agents and those supervising state-owned lands:

(1) To control and eradicate the spread of cut-leaved teasel (Dipsacus laciniatus) and common teasel (Dipsacus fullonum), which are hereby designated as noxious and dangerous weeds to agriculture, by methods approved by the Environmental Protection Agency and in compliance with the manufacturer's label instructions; and

(2) To control the spread of kudzu vine (Pueraria lobata), which is hereby designated as a noxious and dangerous weed to agriculture, by methods approved by the Environmental Protection Agency and in conformity with the manufacturer's label instructions.

347.189. REQUIRES FILING PROPERTY CONTROL AFFIDAVIT IN CERTAIN CITIES, INCLUDING KANSAS CITY. — Any limited liability company that owns and rents or leases real property**, or owns unoccupied real property,** located within any home rule city with a population of more than four hundred thousand inhabitants which is located in more than one county, shall file with that city's clerk an affidavit listing the name and address of at least one person, who has management control and responsibility for the real property owned and leased or rented by the limited liability company**, or owned by the limited liability company and unoccupied**.

Approved July 10, 2001

SB 348 [HCS SB 348]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows for the termination of guardianship of children in certain circumstances.

AN ACT to repeal sections 453.010, 453.070, 453.080 and 475.083, RSMo 2000, relating to the adoption of foster children, and to enact in lieu thereof four new sections relating to the same subject.

SECTION

A. Enacting clause.
453.010. Petition for permission to adopt, venue, jurisdiction — no denial or delay in placement of child based on residence or domicile — expedited placement, when.
453.070. Investigations precondition for adoption — contents of investigation report — how conducted — assessments of adoptive parents, contents — waiving of investigation, when — fees — preference to foster parents, when.
453.080. Hearing — decree — contact or exchange of identifying information between adopted person and birth or adoptive parent not to be denied, when.
475.083. Termination of guardianship or conservatorship, when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 453.010, 453.070, 453.080 and 475.083, RSMo 2000, are repealed and four new sections enacted in lieu thereof, to be known as sections 453.010, 453.070, 453.080 and 475.083, to read as follows:

453.010. PETITION FOR PERMISSION TO ADOPT, VENUE, JURISDICTION — NO DENIAL OR DELAY IN PLACEMENT OF CHILD BASED ON RESIDENCE OR DOMICILE — EXPEDITED PLACEMENT, WHEN. — 1. Any person desiring to adopt another person as his or her child shall petition the juvenile division of the circuit court of the county in which:

(1) The person seeking to adopt resides;

(2) The child sought to be adopted was born;

(3) The child is located at the time of the filing of the petition; or

(4) Either birth person resides.

2. A petition to adopt shall not be dismissed or denied on the grounds that the petitioner is not domiciled or does not reside in any of the venues set forth in subdivision (2), (3) or (4) of subsection 1 of this section.

3. If the person sought to be adopted is a child who is under the prior and continuing jurisdiction of a court pursuant to the provision of chapter 211, RSMo, any person desiring to adopt such person as his or her child shall petition the juvenile division of the circuit court which has jurisdiction over the child for permission to adopt such person as his or her child. Upon receipt of a motion from the petitioner and consent of the receiving court, the juvenile division of the circuit court which has jurisdiction over the child may transfer jurisdiction to the juvenile division of a circuit court within any of the alternative venues set forth in subsection 1 of this section.

4. If the petitioner has a spouse living and competent to join in the petition, such spouse may join therein, and in such case the adoption shall be by them jointly. If such a spouse does not join the petition the court in its discretion may, after a hearing, order such joinder, and if such order is not complied with may dismiss the petition.

5. Upon receipt of a properly filed petition, a court, as defined in this section, shall hear such petition in a timely fashion. A court or any child-placing agency shall not deny or delay the placement of a child for adoption when an approved family is available, regardless of the approved family's residence or domicile. **The court shall expedite the placement of a child for adoption pursuant to subsection 3 of this section.**

453.070. INVESTIGATIONS PRECONDITION FOR ADOPTION — CONTENTS OF INVESTIGATION REPORT — HOW CONDUCTED — ASSESSMENTS OF ADOPTIVE PARENTS, CONTENTS — WAIVING OF INVESTIGATION, WHEN — FEES — PREFERENCE TO FOSTER PARENTS, WHEN. — 1. Except as provided in subsection 5 of this section, no decree for the adoption of a child under eighteen years of age shall be entered for the petitioner or petitioners in such adoption as ordered by the juvenile court having jurisdiction, until a full investigation, which includes an assessment of the adoptive parents, an appropriate postplacement assessment and a summary of written reports as provided for in section 453.026, and any other pertinent information relevant to whether the child is suitable for adoption by the petitioner and whether the petitioner is suitable as a parent for the child, has been made. The report shall also include a statement to the effect that the child has been considered as a potential subsidy recipient.

2. Such investigation shall be made, as directed by the court having jurisdiction, either by the division of family services of the state department of social services, a juvenile court officer, a licensed child-placement agency, a social worker licensed pursuant to chapter 337, RSMo, or other suitable person appointed by the court. The results of such investigation shall be embodied in a written report that shall be submitted to the court within ninety days of the request for the investigation.

3. The department of social services, division of family services, shall develop rules and regulations regarding the content of the assessment of the petitioner or petitioners. The content of the assessment shall include but not be limited to, a report on the condition of the petitioner's home and information on the petitioner's education, financial, marital, medical and psychological status and criminal background check. If an assessment is conducted after August 28, 1997, but prior to the promulgation of rules and regulations by the department concerning the contents of

such assessment, any discrepancy between the contents of the actual assessment and the contents of the assessment required by department rule shall not be used as the sole basis for invalidating an adoption. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

4. The assessment of petitioner or petitioners shall be submitted to the petitioner and to the court prior to the scheduled hearing of the adoptive petition.

5. In cases where the adoption or custody involves a child under eighteen years of age that is the natural child of one of the petitioners and where all of the parents required by this chapter to give consent to the adoption or transfer of custody have given such consent, the juvenile court may waive the investigation and report, except the criminal background check, and enter the decree for the adoption or order the transfer of custody without such investigation and report.

6. In the case of an investigation and report made by the division of family services by order of the court, the court may order the payment of a reasonable fee by the petitioner to cover the costs of the investigation and report.

7. Any adult person or persons over the age of eighteen, who, as foster parent or parents, have cared for a foster child continuously for a period of **[**twelve**]** **nine** months or more and bonding has occurred as evidenced by the positive emotional and physical interaction between the foster parent and child, may apply to such authorized agency for the placement of such child with them for the purpose of adoption if the child is eligible for adoption. The agency and court shall give preference and first consideration for adoptive placements to foster parents. However, the final determination of the propriety of the adoption of such foster child shall be within the sole discretion of the court.

453.080. HEARING — DECREE — CONTACT OR EXCHANGE OF IDENTIFYING INFORMATION BETWEEN ADOPTED PERSON AND BIRTH OR ADOPTIVE PARENT NOT TO BE DENIED, WHEN. — 1. The court shall conduct a hearing to determine whether the adoption shall be finalized. During such hearing, the court shall ascertain whether:

(1) The person sought to be adopted, if a child, has been in the lawful and actual custody of the petitioner for a period of at least six months prior to entry of the adoption decree**; except that the six month period may be waived if the person sought to be adopted is a child who is under the prior and continuing jurisdiction of a court pursuant to chapter 211, RSMo, and the person desiring to adopt the child is the child's current foster parent**. "Lawful and actual custody" shall include a transfer of custody pursuant to the laws of this state, another state, a territory of the United States, or another country;

(2) The court has received and reviewed a postplacement assessment on the monthly contacts with the adoptive family pursuant to section 453.077, except for good cause shown in the case of a child adopted from a foreign country;

(3) The court has received and reviewed an updated financial affidavit;

(4) The court has received the recommendations of the guardian ad litem and has received and reviewed the recommendations of the person placing the child, the person making the assessment and the person making the postplacement assessment;

(5) There is compliance with the uniform child custody jurisdiction act, sections 452.440 to 452.550, RSMo;

(6) There is compliance with the Indian Child Welfare Act, if applicable;

(7) There is compliance with the Interstate Compact on the Placement of Children pursuant to section 210.620, RSMo; and

(8) It is fit and proper that such adoption should be made.

2. If a petition for adoption has been filed pursuant to section 453.010 and a transfer of custody has occurred pursuant to section 453.110, the court may authorize the filing for finalization in another state if the adoptive parents are domiciled in that state.

3. If the court determines the adoption should be finalized, a decree shall be issued setting forth the facts and ordering that from the date of the decree the adoptee shall be for all legal intents and purposes the child of the petitioner or petitioners. The court may decree that the name of the person sought to be adopted be changed, according to the prayer of the petition.

4. Before the completion of an adoption, the exchange of information among the parties shall be at the discretion of the parties. Upon completion of an adoption, further contact among the parties shall be at the discretion of the adoptive parents. The court shall not have jurisdiction to deny continuing contact between the adopted person and the birth parent, or an adoptive parent and a birth parent. Additionally, the court shall not have jurisdiction to deny an exchange of identifying information between an adoptive parent and a birth parent.

475.083. TERMINATION OF GUARDIANSHIP OR CONSERVATORSHIP, WHEN. — 1. The authority of a guardian or conservator terminates:

(1) When a minor ward becomes eighteen years of age;

(2) Upon an adjudication that an incapacitated or disabled person has been restored to his capacity or ability;

(3) Upon revocation of the letters of the guardian or conservator;

(4) Upon the acceptance by the court of the resignation of the guardian or conservator;

(5) Upon the death of the ward or protectee except that if there is no person other than the estate of the ward or protectee liable for the funeral and burial expenses of the ward or protectee the guardian or conservator may, with the approval of the court, contract for the funeral and burial of the deceased ward or protectee;

(6) Upon the expiration of an order appointing a guardian or conservator ad litem unless the court orders extension of the appointment;

(7) Upon an order of court terminating the guardianship or conservatorship.

2. A guardianship or conservatorship may be terminated by court order after such notice as the court may require:

(1) If the conservatorship estate is exhausted;

(2) If the **[**guardianship or**]** conservatorship is no longer necessary for any other reason**;**

(3) If the court finds that a parent is fit, suitable and able to assume the duties of guardianship and it is in the best interest of the minor that the guardianship be terminated.

3. Notwithstanding the termination of the authority of a conservator, he shall continue to have such authority as may be necessary to wind up his administration.

4. At any time the guardian, conservator or any person on behalf of the ward or protectee may, individually or jointly with the ward or protectee, or the ward or protectee individually may petition the court to restore the ward or protectee, or to decrease the powers of the guardian or conservator, except that if the court determines that the petition is frivolous, the court may summarily dismiss the petition without hearing.

5. Upon the filing of a joint petition by the guardian or conservator and the ward or protectee, the court, if it finds restoration or modification to be in the best interests of the ward or protectee, may summarily order restoration or modification of the powers of the guardian or conservator without the necessity of notice and hearing.

6. Upon the filing of a petition without the joinder of the guardian or conservator, the court shall cause the petition to be set for hearing with notice to the guardian or conservator. If the ward or protectee is not represented by an attorney, the court shall appoint an attorney to represent the ward or protectee in such proceeding. The burden of proof by a preponderance of the evidence shall be upon the petitioner. Such a petition may not be filed more than once every one hundred eighty days.

7. At any time the guardian or conservator may petition the court to increase his powers. Proceedings on the petition shall be in accordance with the provisions of section 475.075.

Approved July 6, 2001

SB 352 [SCS SB 352]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Defines terms relating to the capital improvements sales tax in certain municipalities.

AN ACT to amend chapter 94, RSMo, by adding thereto one new section relating to capital improvements.

SECTION
A. Enacting clause.
94.575. Definitions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 94, RSMo, is amended by adding thereto one new section, to be known as section 94.575, to read as follows:

94.575. DEFINITIONS. — The following words, as used in sections 94.575 to 94.577, shall mean:

(1) "Capital asset" or "fixed asset", assets of a long-term character that are intended to continue to be held or used, including but not limited to land, buildings, machinery, furniture, and other equipment, including computer hardware and software;

(2) "Capital improvements", any capital or fixed asset having an estimated economic useful life of at least two years.

Approved July 10, 2001

SB 353 [SB 353]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Revises "recalculated levy" used to determine state aid for certain school districts.

AN ACT to repeal section 163.011, RSMo 2000, relating to recalculated tax rates for school districts, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
163.011. Definitions — method of calculating state aid.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 163.011, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 163.011, to read as follows:

163.011. DEFINITIONS — METHOD OF CALCULATING STATE AID. — As used in this chapter unless the context requires otherwise:

(1) "Adjusted gross income":

(a) "District adjusted gross income per return" shall be the total Missouri individual adjusted gross income in a school district divided by the total number of Missouri income tax returns filed from the school district as reported by the state department of revenue for the second preceding year;

(b) "State adjusted gross income per return" shall be the total Missouri individual adjusted gross income divided by the total number of Missouri individual income tax returns, of those returns designating school districts, as reported by the state department of revenue for the second preceding year;

(c) "District income factor" shall be one plus thirty percent of the difference of the district income ratio minus one, except that the district income factor applied to the portion of the assessed valuation corresponding to any increase in assessed valuation above the assessed valuation of a district as of December 31, 1994, shall not exceed a value of one;

(d) "District income ratio" shall be the ratio of the district adjusted gross income per return divided by the state adjusted gross income per return;

(2) "Adjusted operating levy", the sum of tax rates for the current year for teachers' and incidental funds for a school district as reported to the proper officer of each county pursuant to section 164.011, RSMo;

(3) "Average daily attendance" means the quotient or the sum of the quotients obtained by dividing the total number of hours attended in a term by resident pupils between the ages of five and twenty-one by the actual number of hours school was in session in that term. To the average daily attendance of the following school term shall be added the full-time equivalent average daily attendance of summer school students. "Full-time equivalent average daily attendance of summer school students" shall be computed by dividing the total number of hours attended by all summer school pupils by the number of hours required in section 160.011, RSMo, in the school term. For purposes of determining average daily attendance under this subdivision, the term "resident pupil" shall include all children between the ages of five and twenty-one who are residents of the school district and who are attending kindergarten through grade twelve in such district. If a child is attending school in a district other than the district of residence and the child's parent is teaching in the school district or is a regular employee of the school district which the child is attending, then such child shall be considered a resident pupil of the school district which the child is attending for such period of time when the district of residence is not otherwise liable for tuition. Average daily attendance for students below the age of five years for which a school district may receive state aid based on such attendance shall be computed as regular school term attendance unless otherwise provided by law;

(4) "Current operating costs", all expenditures for instruction and support services excluding capital outlay and debt service expenditures less the revenue from federal categorical sources, food service, student activities and payments from other districts;

(5) "District's target rate", the district's average percentage of pupils from fiscal years 2000 to 2005 scoring at or above the proficiency level on the statewide assessment system on either mathematics or reading/communication arts plus one percentage point for each year after fiscal year 2005 except that the district's target rate shall not exceed the statewide average percentage from fiscal year 2000 to fiscal year 2005 scoring at or above the proficiency level on the statewide assessment system on either mathematics or reading/communication arts;

(6) "District's tax rate ceiling", the highest tax rate ceiling in effect subsequent to the 1980 tax year or any subsequent year. Such tax rate ceiling shall not contain any tax levy for debt service;

(7) "Eligible pupils" shall be the sum of the average daily attendance of the school term plus the product of two times the average daily attendance for summer school;

(8) "Equalized assessed valuation of the property of a school district" shall be determined by multiplying the assessed valuation of the real property subclasses specified in section 137.115, RSMo, times the percent of true value as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent and dividing

by either the percent of true value as determined by the state tax commission on or before March fifteenth preceding the fiscal year in which the valuation will be effective as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent or the average percent of true value for the highest three of the last four years as determined and certified by the state tax commission, whichever is greater. To the equalized locally assessed valuation of each district shall be added the assessed valuation of tangible personal property. The assessed valuation of property which has previously been excluded from the tax rolls, which is being contested as not being taxable and which increases the total assessed valuation of the school district by fifty percent or more, shall not be included in the calculation of equalized assessed valuation under this subdivision;

(9) "Fiscal instructional ratio of efficiency", the quotient of the sum of the district's current operating costs for all kindergarten through grade twelve direct instructional and direct pupil support service functions plus the costs of improvement of instruction and the cost of purchased services and supplies for operation of the facilities housing those programs, excluding student activities, divided by the sum of the district's current operating cost for kindergarten through grade twelve, plus all tuition revenue received from other districts minus all noncapital transportation costs;

(10) "Free and reduced lunch eligible pupil count", the number of pupils eligible for free and reduced lunch on the last Wednesday in January for the preceding school year who were enrolled as students of the district, as approved by the department in accordance with applicable federal regulations;

(11) "Guaranteed tax base" means the amount of equalized assessed valuation per eligible pupil guaranteed each school district by the state in the computation of state aid. To compute the guaranteed tax base, school districts shall be ranked annually from lowest to highest according to the amount of equalized assessed valuation per pupil. The guaranteed tax base shall be based upon the amount of equalized assessed valuation per pupil of the school district in which the ninety-fifth percentile of the state aggregate number of pupils falls during the third preceding year and shall be equal to the state average equalized assessed valuation per eligible pupil for the third preceding year times two and one hundred and sixty-seven thousandths; except that, for the purposes of line 14(b) the guaranteed tax base shall be no greater than the guaranteed tax base used for the 1998-99 payment year. The average equalized assessed valuation per pupil shall be the quotient of the total equalized assessed valuation of the state divided by the number of eligible pupils;

(12) "Membership" shall be the average of (1) the number of resident full-time students and the full-time equivalent number of part-time students who were enrolled in the public schools of the district on the last Wednesday in September of the previous year and who were in attendance one day or more during the preceding ten school days and (2) the number of resident full-time students and the full-time equivalent number of part-time students who were enrolled in the public schools of the district on the last Wednesday in January of the previous year and who were in attendance one day or more during the preceding ten school days, plus the full-time equivalent number of summer school pupils. "Full-time equivalent number of part-time students" is determined by dividing the total number of hours for which all part-time students are enrolled by the number of hours in the school term. "Full-time equivalent number of summer school pupils" is determined by dividing the total number of hours for which all summer school pupils were enrolled by the number of hours required pursuant to section 160.011, RSMo, in the school term. Only students eligible to be counted for average daily attendance shall be counted for membership;

(13) "Operating levy for school purposes" for districts making transfers pursuant to subsection 4 of section 165.011, RSMo, based upon amounts multiplied by the guaranteed tax base, or making payments or expenditures related to obligations made pursuant to section 177.088, RSMo, or any combination of such transfers, payments or expenditures, means the sum of tax rates levied for teachers' and incidental funds plus the operating levy or sales tax equivalent

pursuant to section 162.1100, RSMo, of any transitional school district containing the school district, in the payment year, and, for other districts, means the sum of tax rates levied for incidental, teachers', debt service and capital projects funds plus the operating levy or sales tax equivalent pursuant to section 162.1100, RSMo, of any transitional school district containing the school district, with no more than eighteen cents of the sum levied in the debt service and capital projects funds. Any portion of the operating levy for school purposes levied in the debt service and capital projects funds in excess of a sum of ten cents must be authorized by a vote of the people, after August 28, 1998, approving an increase in the operating levy, or a full waiver of the rollback pursuant to section 164.013, RSMo, with a tax rate ceiling in excess of the minimum tax rate or an issuance of general obligation bond. The operating levy shall be, after all adjustments and equalization of the operating levy, no greater than a maximum value of four dollars and ninety-five cents per one hundred dollars assessed valuation, except that the operating levy shall be no greater than a maximum value of four dollars and seventy cents per one hundred dollars assessed valuation for the purposes of line 2 of subsection 6 of section 163.031. To equalize the operating levy, multiply the aggregate tax rates for teachers' and incidental funds by either the percent of true value, as determined by the state tax commission on or before March fifteenth preceding the fiscal year in which the evaluation will be effective as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent, or the average percent of true value for the highest three of the last four years as determined and certified by the state tax commission, whichever is greater, and divide by the percent of true value as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent, provided that for any district for which the equivalent sales ratio is equal to or greater than thirty-three and one-third percent, the equalized operating levy shall be the adjusted operating levy. For any county in which the equivalent sales ratio is less than thirty-one and two-thirds percent, the state tax commission shall conduct a second study in that county and shall use a sample consisting of the parcels used as a sample in the original study combined with an equal number of newly selected parcels. If the new ratio is higher than the original ratio provided by this subdivision, the new ratio shall be used for the purposes of this subdivision and for determining equalized assessed valuation pursuant to subdivision (8) of this section. For the purposes of calculating state aid pursuant to section 163.031, for any district which has not **[**enacted**]** **decreased its tax rate from the previous year amount due to an increased amount of** a voluntary tax rate rollback **[**nor increased the amount of a voluntary tax rate rollback from the previous year's amount**]**, the tax rate used to determine a district's entitlement shall be adjusted so that any decrease in the entitlement due to a decrease in the tax rate resulting from the reassessment shall equal the decrease in the deduction for the assessed valuation of the district as a result of the change in the tax rate due to reassessment. The tax rate adjustments required under this subdivision due to reassessment shall be cumulative and shall be applied each year to determine the tax rate used to calculate the entitlement; **[**except that whenever the actual current operating levy equals or exceeds the tax rate calculated pursuant to this subdivision for the purpose of determining the district's entitlement, then the prior tax rate adjustments required under this subdivision due to reassessment shall be eliminated and shall not be applied in determining the tax rate used to calculate the district entitlement, except that whenever the actual current operating levy is increased by school board action prior to January 1, 2000, or by district voter approval at any time, to a level which equals or exceeds the tax rate calculated pursuant to this subdivision for the purpose of determining the districts entitlement, then the prior tax rate adjustments required under this subdivision due to reassessment shall be eliminated after five years and shall not thereafter be applied in determining the tax rate used to calculate the district entitlement;**]**

(14) "School purposes" pertains to teachers' and incidental funds;

(15) "Teacher" means any teacher, teacher-secretary, substitute teacher, supervisor, principal, supervising principal, superintendent or assistant superintendent, school nurse, social

worker, counselor or librarian who shall, regularly, teach or be employed for no higher than grade twelve more than one-half time in the public schools and who is certified under the laws governing the certification of teachers in Missouri.

Approved June 26, 2001

SB 357 [SCS SB 357]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Modifies licensing provisions for psychologists and professional counselors.

AN ACT to repeal section 337.029 as enacted by conference committee substitute for senate committee substitute for house substitute for house committee substitute for house bills nos. 1601, 1591, 1592, 1479, 1615 and house committee substitute for house bills nos. 1094, 1213, 1311 & 1428, eighty-ninth general assembly, second regular session, section 337.029 as enacted by house committee substitute for senate committee substitute for senate bill no. 732 of the eighty-ninth general assembly, second regular session, and section 337.510, RSMo 2000, relating to professional services, and to enact in lieu thereof two new sections relating to the same subject.

SECTION

A. Enacting clause.
337.029. Licenses based on reciprocity to be issued, when — health service provider certification eligibility.
337.029. Licenses based on reciprocity to be issued, when — health service provider certification eligibility.
337.510. Education, experience requirements for licensure — reciprocity — provisional professional counselor license issued, when, requirements.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 337.029 as enacted by conference committee substitute for senate committee substitute for house substitute for house committee substitute for house bills nos. 1601, 1591, 1592, 1479, 1615 and house committee substitute for house bills nos. 1094, 1213, 1311 & 1428, eighty-ninth general assembly, second regular session, section 337.029 as enacted by house committee substitute for senate committee substitute for senate bill no. 732 of the eighty-ninth general assembly, second regular session, and section 337.510, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 337.029 and 337.510, to read as follows:

337.029. LICENSES BASED ON RECIPROCITY TO BE ISSUED, WHEN — HEALTH SERVICE PROVIDER CERTIFICATION ELIGIBILITY. — 1. A psychologist licensed in another jurisdiction who has had no violations and no suspensions and no revocation of a license to practice psychology in any jurisdiction may receive a license in Missouri, provided the psychologist passes a written examination on Missouri laws and regulations governing the practice of psychology and meets one of the following criteria:

(1) Is a diplomate of the American Board of Professional Psychology;

(2) Is a member of the National Register of Health Service Providers in Psychology;

(3) Is currently licensed or certified as a psychologist in another jurisdiction who is then a signatory to the Association of State and Provincial Psychology Board's reciprocity agreement;

(4) Is currently licensed or certified as a psychologist in another state, territory of the United States, or the District of Columbia and:

(a) Has a doctoral degree in psychology from a program accredited, or provisionally accredited, by the American Psychological Association or that meets the requirements as set forth in subdivision (3) of subsection 3 of section 337.025;

(b) Has been licensed for the preceding five years; and

(c) Has had no disciplinary action taken against the license for the preceding five years; **[**or**]**

(5) Is currently licensed or certified as a psychologist in a state, territory of the United States, or the District of Columbia that extends like privileges for reciprocal licensing or certification to persons licensed by this state with similar qualifications**; or**

(6) Holds a current certificate of professional qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB).

2. Notwithstanding the provisions of subsection 1 of this section, applicants may be required to pass an oral examination as adopted by the committee.

3. A psychologist who receives a license for the practice of psychology in the state of Missouri on the basis of reciprocity as listed in subsection 1 of this section or by endorsement of the score from the examination of professional practice in psychology score will also be eligible for and shall receive certification from the committee as a health service provider if the psychologist meets one or more of the following criteria:

(1) Is a diplomate of the American Board of Professional Psychology in one or more of the specialties recognized by the American Board of Professional Psychology as pertaining to health service delivery;

(2) Is a member of the National Register of Health Service Providers in Psychology; or

(3) Has completed or obtained through education, training, or experience the requisite knowledge comparable to that which is required pursuant to section 337.033.

[337.029. LICENSES BASED ON RECIPROCITY TO BE ISSUED, WHEN — HEALTH SERVICE PROVIDER CERTIFICATION ELIGIBILITY. — 1. A psychologist licensed in another jurisdiction who has had no violations and no suspensions and no revocation of a license to practice psychology in any jurisdiction may receive a license in Missouri, provided the psychologist passes a written examination on Missouri laws and regulations governing the practice of psychology and meets one of the following criteria:

(1) Is a diplomate of the American Board of Professional Psychology;

(2) Is a member of the National Register of Health Service Providers in Psychology;

(3) Is currently licensed or certified as a psychologist in another jurisdiction who is then a signatory to the Association of State and Provincial Psychology Board's reciprocity agreement;

(4) Is currently licensed or certified as a psychologist in another state, territory of the United States, or the District of Columbia whose requirements for licensure at the time the applicant was licensed were substantially equal to or greater than this state's requirements were for licensure at such time; or

(5) Is currently licensed or certified as a psychologist in a state, territory of the United States, or the District of Columbia that extends like privileges for reciprocal licensing or certification to persons licensed by this state with similar qualifications.

2. Notwithstanding the provisions of subsection 1 of this section, applicants may be required to pass an oral examination as adopted by the committee.

3. A psychologist who receives a license for the practice of psychology in the state of Missouri on the basis of reciprocity as listed in subsection 1 of this section or by endorsement of the score from the examination of professional practice in psychology score will also be eligible for and shall receive certification from the committee as a health service provider if the psychologist meets one or more of the following criteria:

(1) Is a diplomate of the American Board of Professional Psychology in one or more of the specialties recognized by the American Board of Professional Psychology as pertaining to health service delivery;

(2) Is a member of the National Register of Health Service Providers in Psychology; or

(3) Has completed or obtained through education, training, or experience the requisite knowledge comparable to that which is required pursuant to section 337.033.**]**

337.510. EDUCATION, EXPERIENCE REQUIREMENTS FOR LICENSURE — RECIPROCITY — PROVISIONAL PROFESSIONAL COUNSELOR LICENSE ISSUED, WHEN, REQUIREMENTS. — 1. Each applicant for licensure as a professional counselor shall furnish evidence to the committee that:

(1) The applicant has met any one of the three following education-experience requirements:

(a) The applicant has received a doctoral degree with a major in counseling, or its equivalent, from an acceptable educational institution, as defined by division rules, and has completed at least one year of acceptable supervised counseling experience subsequent to receipt of the doctoral degree; or

(b) The applicant has received a specialist's degree with a major in counseling, or its equivalent, from an acceptable educational institution, as defined by division rules, and has completed at least one year of acceptable supervised counseling experience subsequent to receipt of the specialist's degree; or

(c) The applicant has received at least a master's degree with a major in counseling, or its equivalent, from an acceptable educational institution as defined by division rules, and has completed two years of acceptable supervised counseling experience subsequent to receipt of the master's degree. An applicant may substitute thirty semester hours of post-master's graduate study, or their equivalent, for one of the two required years of acceptable supervised counseling experience, if such hours are clearly related to the field of professional counseling and are earned from an acceptable educational institution.

(2) Upon examination, the applicant is possessed of requisite knowledge of the profession, including techniques and applications, research and its interpretation, and professional affairs and ethics.

2. Any person **[**not a resident of this state**]** holding a valid unrevoked, **unsuspended** and unexpired license as a professional counselor issued by a state having substantially the same licensing requirements as this state **[**may**] shall** be granted a license to engage in the person's occupation in this state upon application to the committee accompanied by the appropriate fee as established by the committee pursuant to section 337.507.

3. **Any person who previously held a valid unrevoked, unsuspended license as a professional counselor in this state and who held a valid license in another state at the time of application to the committee shall be granted a license to engage in professional counseling in this state upon application to the committee accompanied by the appropriate fee as established by the committee pursuant to section 337.507.**

4. The committee shall issue a license to each person who files an application and fee as required by the provisions of sections 337.500 to 337.540 and who furnishes evidence satisfactory to the committee that the applicant has complied with the provisions of subdivisions (1) and (2) of subsection 1 of this section or with the provisions of **[**subsection**] subsections** 2 **or 3** of this section. The division shall issue a provisional professional counselor license to any applicant who meets all requirements of subdivisions (1) and (2) of subsection 1 of this section, but who has not completed the required one or two years of acceptable supervised counseling experience required by paragraphs (a) to (c) of subdivision (1) of subsection 1 of this section, and such applicant may reapply for licensure as a professional counselor upon completion of such acceptable supervised counseling experience.

Approved July 13, 2001

SB 369 [CCS HS HCS SS SCS SB 369]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows political subdivisions to require permits for public utility right-of-way use.

AN ACT to amend chapter 67, RSMo, by adding thereto nine new sections relating to utility access to public rights-of-way.

SECTION

A. Enacting clause.
67.1830. Definitions.
67.1832. Political subdivisions required to consent to certain activities by public utility right-of-way users — recovery of costs, procedure — permitted ordinance requirements.
67.1834. Restoration of a public right-of-way after excavation, standards and conditions, completion dates.
67.1836. Denial of an application for a right-of-way permit, when — revocation of a permit, when — bulk processing of permits allowed, when.
67.1838. Disputes to be reviewed by governing body of the political subdivision — mediation or binding arbitration permitted, when, procedure.
67.1840. Fee imposed to recover management costs, amount — allocation of such fees — uniform application of right-of-way laws required.
67.1842. Prohibited acts by political subdivisions — no right-of-way permit required for projects commenced prior to August 28, 2001 — no fee required, when.
67.1844. Compliance with applicable safety and construction codes required — licensed contractors and subcontractors required, when.
67.1846. Exceptions to applicability of right-of-way laws.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 67, RSMo, is amended by adding thereto nine new sections, to be known as sections 67.1830, 67.1832, 67.1834, 67.1836, 67.1838, 67.1840, 67.1842, 67.1844 and 67.1846, to read as follows:

67.1830. DEFINITIONS. — As used in sections 67.1830 to 67.1846, the following terms shall mean:

(1) "Abandoned equipment or facilities", any equipment materials, apparatuses, devices or facilities that are:

(a) Declared abandoned by the owner of such equipment or facilities;

(b) No longer in active use, physically disconnected from a portion of the operating facility or any other facility that is in use or in service, and no longer capable of being used for the same or similar purpose for which the equipment, apparatuses or facilities were installed; or

(c) No longer in active use and the owner of such equipment or facilities fails to respond within thirty days to a written notice sent by a political subdivision;

(2) "Degradation", the actual or deemed reduction in the useful life of the public right-of-way resulting from the cutting, excavation or restoration of the public right-of-way;

(3) "Emergency", includes but is not limited to the following:

(a) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public utility facility that prevents or significantly jeopardizes the ability of a public utility to provide service to customers;

(b) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public utility facility that results or could result in danger to the public or a material delay or hindrance to the provision of service to the public if the outage, cut, rupture, leak or

any other such failure of public utility facilities is not immediately repaired, controlled, stabilized or rectified; or

(c) Any occurrence involving a public utility facility that a reasonable person could conclude under the circumstances that immediate and undelayed action by the public utility is necessary and warranted;

(4) "Excavation", any act by which earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, by means of any tools, equipment or explosives, except that the following shall not be deemed excavation:

(a) Any de minimis displacement or movement of ground caused by pedestrian or vehicular traffic;

(b) The replacement of utility poles and related equipment at the existing general location that does not involve either a street or sidewalk cut; or

(c) Any other activity which does not disturb or displace surface conditions of the earth, asphalt, concrete, sand, gravel, rock or any other material in or on the ground;

(5) "Management costs" or "rights-of-way management costs", the actual costs a political subdivision reasonably incurs in managing its public rights-of-way, including such costs, if incurred, as those associated with the following:

(a) Issuing, processing and verifying right-of-way permit applications;

(b) Inspecting job sites and restoration projects;

(c) Protecting or moving public utility right-of-way user construction equipment after reasonable notification to the public utility right-of-way user during public right-of-way work;

(d) Determining the adequacy of public right-of-way restoration;

(e) Restoring work inadequately performed after providing notice and the opportunity to correct the work; and

(f) Revoking right-of-way permits.

Right-of-way management costs shall be the same for all entities doing similar work. Management costs or rights-of-way management costs shall not include payment by a public utility right-of-way user for the use or rent of the public right-of-way, degradation of the public right-of-way or any costs as outlined in paragraphs (a) to (h) of this subdivision which are incurred by the political subdivision as a result of use by users other than public utilities, the fees and cost of litigation relating to the interpretation of this section or section 67.1832, or litigation, interpretation or development of any ordinance enacted pursuant to this section or section 67.1832, or the political subdivision's fees and costs related to appeals taken pursuant to section 67.1838. In granting or renewing a franchise for a cable television system, a political subdivision may impose a franchise fee and other terms and conditions permitted by federal law.

(6) "Managing the public right-of-way", the actions a political subdivision takes, through reasonable exercise of its police powers, to impose rights, duties and obligations on all users of the right-of-way, including the political subdivision, in a reasonable, competitively neutral and nondiscriminatory and uniform manner, reflecting the distinct engineering, construction, operation, maintenance and public work and safety requirements applicable to the various users of the public right-of-way, provided that such rights, duties and obligations shall not conflict with any federal law or regulation. In managing the public right-of-way, a political subdivision may:

(a) Require construction performance bonds or insurance coverage or demonstration of self-insurance at the option of the political subdivision or if the public utility right-of-way user has twenty-five million dollars in net assets and does not have a history of permitting noncompliance within the political subdivision as defined by the political subdivision, then the public utility right-of-way user shall not be required to provide such bonds or insurance;

(b) Establish coordination and timing requirements that do not impose a barrier to entry;

(c) Require public utility right-of-way users to submit, for right-of-way projects commenced after the effective date of this act, requiring excavation within the public right-of-way, whether initiated by a political subdivision or any public utility right-of-way user, project data in the form maintained by the user and in a reasonable time after receipt of the request based on the amount of data requested;

(d) Establish right-of-way permitting requirements for street excavation;

(e) Establish removal requirements for abandoned equipment or facilities, if the existence of such facilities prevents or significantly impairs right-of-way use, repair, excavation or construction;

(f) Establish permitting requirements for towers and other structures or equipment for wireless communications facilities in the public right-of-way, notwithstanding the provisions of section 67.1832;

(g) Establish standards for street restoration in order to lessen the impact of degradation to the public right-of-way; and

(h) Impose permit conditions to protect public safety;

(7) "Political subdivision", a city, town, village, county of the first classification or county of the second classification;

(8) "Public right-of-way", the area on, below or above a public roadway, highway, street or alleyway in which the political subdivision has an ownership interest, but not including:

(a) The airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast service;

(b) Easements obtained by utilities or private easements in platted subdivisions or tracts;

(c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or

(d) Poles, pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses utilized by a municipally owned or operated utility pursuant to chapter 91, RSMo, or pursuant to a charter form of government;

(9) "Public utility", every cable television service provider, every pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to chapter 91, RSMo, or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to chapter 394, RSMo; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the public rights-of-way;

(10) "Public utility right-of-way user", a public utility owning or controlling a facility in the public right-of-way; and

(11) "Right-of-way permit", a permit issued by a political subdivision authorizing the performance of excavation work in a public right-of-way.

67.1832. POLITICAL SUBDIVISIONS REQUIRED TO CONSENT TO CERTAIN ACTIVITIES BY PUBLIC UTILITY RIGHT-OF-WAY USERS — RECOVERY OF COSTS, PROCEDURE — PERMITTED ORDINANCE REQUIREMENTS. — 1. In addition to any other grants for the use of public

thoroughfares, and pursuant to this section, a political subdivision shall grant its consent to a public utility right-of-way user authorized to do business pursuant to the laws of this state or by license of the Federal Energy Regulatory Commission, United States Department of Transportation, or the Federal Communications Commission to construct, maintain and operate all equipment, facilities, devices, materials, apparatuses, or media including but not limited to, conduits, ducts, lines, pipes, wires, hoses, cables, culverts, tubes, poles, towers, manholes, transformers, regulator stations, underground vaults, receivers, transmitters, satellite dishes, micro cells, Pico cells, repeaters, or amplifiers useable for the transmission or distribution of any service or commodity installed below or above ground in the public right-of-way; provided that, no political subdivision shall require any conditions that are inconsistent with the rules and regulations of the Federal Energy Regulatory Commission, United States Department of Transportation, Federal Communications Commission or the Missouri public service commission.

2. Pursuant to this section, a political subdivision may manage its public rights-of-way and may recover its rights-of-way management costs as set forth in sections 67.1830 to 67.1846. The authority granted in this section may be authorized at the option of the political subdivision, and the exercise of this authority is not mandated pursuant to this section. A political subdivision may, by ordinance:

(1) Require a public utility right-of-way user seeking to excavate within a public right-of-way to obtain a right-of-way permit and to impose permit conditions consistent with the political subdivision's management of the right-of-way;

(2) Require public utility right-of-way users to provide required notice to the political subdivision by submitting plans for anticipated construction projects that require excavation within the public right-of-way; and

(3) In cases of emergency, public utility right-of-way users may proceed with required work without a permit; however, a political subdivision may require submission of the necessary information and permit fee following the emergency.

67.1834. RESTORATION OF A PUBLIC RIGHT-OF-WAY AFTER EXCAVATION, STANDARDS AND CONDITIONS, COMPLETION DATES. — 1. A public utility right-of-way user, after an excavation of a public right-of-way, shall provide for restoration of the right-of-way and surrounding areas, including the pavement and its foundation, in accordance with the standards and conditions of the political subdivision, unless the political subdivision, at its option, chooses to perform its own street restoration, in which case the public utility right-of-way user shall be responsible for reimbursing the political subdivision its reasonable actual restoration costs within thirty days of invoice. Restoration of the public right-of-way shall be completed within the dates specified in the right-of-way permit, unless the permittee obtains a waiver, extension or a new or amended right-of-way permit. Every right-of-way user to whom a right-of-way permit has been granted shall guarantee for a period of four years the restoration of the right-of-way in the area where such right-of-way user conducted excavation and performed the restoration.

2. If a public utility right-of-way user fails to restore the public right-of-way within the date specified in the right- of-way permit, or has not acquired a waiver or extension to such permit, a political subdivision is authorized to perform its own restoration required as a result of the excavation, and require the public utility right-of-way user to reimburse the political subdivision for the actual costs of such restoration.

67.1836. DENIAL OF AN APPLICATION FOR A RIGHT-OF-WAY PERMIT, WHEN — REVOCATION OF A PERMIT, WHEN — BULK PROCESSING OF PERMITS ALLOWED, WHEN. — 1. A political subdivision may deny an application for a right-of-way permit if:

(1) The public utility right-of-way user fails to provide all the necessary information requested by the political subdivision for managing the public right-of-way;

(2) The public utility right-of-way user has failed to return the public right-of-way to its previous condition under a previous permit;

(3) The political subdivision has provided the public utility right-of-way user with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the work identified in the permit application or a reasonable alternative route that will result in neither additional installation expense up to ten percent to the public utility right-of-way user nor a declination of service quality;

(4) The political subdivision determines that the denial is necessary to protect the public health and safety, provided that the authority of the political subdivision does not extend to those items under the jurisdiction of the public service commission, such denial shall not interfere with a public utility's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis; or

(5) The area is environmentally sensitive as defined by state statute or federal law or is a historic district as defined by local ordinance.

2. A political subdivision may, after reasonable notice and an opportunity to cure, revoke a right-of-way permit granted to a public utility right-of-way user, with or without fee refund, and/or impose a penalty as established by the political subdivision until the breach is cured, but only in the event of a substantial breach of the terms and material conditions of the permit. A substantial breach by a permittee includes but is not limited to:

(1) A material violation of a provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its citizens;

(3) A material misrepresentation of fact in the right-of-way permit application;

(4) A failure to complete work by the date specified in the right-of-way permit, unless a permit extension is obtained or unless the failure to complete the work is due to reasons beyond the permittee's control; and

(5) A failure to correct, within the time specified by the political subdivision, work that does not conform to applicable national safety codes, industry construction standards, or local safety codes that are no more stringent than national safety codes, upon inspection and notification by the political subdivision of the faulty condition.

3. Any political subdivision that requires public utility right-of-way users to obtain a right-of-way permit, except in an emergency, prior to performing excavation work within a public right-of-way shall promptly, but not longer than thirty-one days, process all completed permit applications. In order to avoid excessive processing and accounting costs to either the political subdivision or the public utility right-of-way user, the political subdivision may establish procedures for bulk processing of permits and periodic payment of permit fees.

67.1838. DISPUTES TO BE REVIEWED BY GOVERNING BODY OF THE POLITICAL SUBDIVISION — MEDIATION OR BINDING ARBITRATION PERMITTED, WHEN, PROCEDURE. — 1. A public utility right-of-way user that has been denied a right-of-way permit, has had its right-of-way permit revoked, believes that the fees imposed on the public right-of-way user by the political subdivision do not conform to the requirements of section 67.1840 or asserts any other issues related to the use of the public right-of-way, shall have, upon written request, such denials, revocations, fee impositions, or other disputes reviewed by the governing body of the political subdivision or an entity assigned by the governing body for this purpose. The governing body of the political subdivision or its delegated entity shall specify, in its permit processing schedules, the maximum number of days by which the review request shall be filed in order to be reviewed by the governing body of the

political subdivision or its delegated entity. A decision affirming the denial, revocation, fee imposition or dispute resolution shall be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon affirmation by the governing body of the denial, revocation, fee imposition or dispute resolution, the public utility right-of-way user may, in addition to all other remedies and if both parties agree, have the right to have the matter resolved by mediation or binding arbitration. Binding arbitration shall be before an arbitrator agreed to by both the political subdivision and the public utility right-of-way user. The costs and fees of a single arbitrator shall be borne equally by the political subdivision and the public utility right-of-way user.

3. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel consisting of one arbitrator selected by the political subdivision, one arbitrator selected by the public utility right-of-way user, and one person selected by the other two arbitrators. In the event that a three-person arbitrator panel is necessary, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

4. Each party to the arbitration shall pay its own costs, disbursements and attorney fees.

67.1840. FEE IMPOSED TO RECOVER MANAGEMENT COSTS, AMOUNT — ALLOCATION OF SUCH FEES — UNIFORM APPLICATION OF RIGHT-OF-WAY LAWS REQUIRED. — 1. A political subdivision may recover its right-of-way management costs by imposing a fee for permits issued by the political subdivision. A political subdivision shall not recover from a public utility right-of-way user costs caused by another entity's activity or inactivity in the public right-of-way.

2. Right-of-way permit fees imposed by a political subdivision on public utility right-of-way users shall be:

(1) Based on the actual, substantiated costs reasonably incurred by the political subdivision in managing the public right-of-way;

(2) Based on an allocation among all users of the public right-of-way, including the political subdivision itself, which shall reflect the proportionate costs imposed on the political subdivision by each of the various types of uses of the public rights-of-way;

(3) Imposed on a competitively neutral and nondiscriminatory basis; and

(4) Imposed in a manner so that aboveground uses of the public right-of-way do not bear costs incurred by the political subdivision to regulate underground uses of the public right-of-way.

3. The public utility right-of-way user shall have the right to equitably allocate, and may separately state in the customer's bill, any or all right-of-way permit fees imposed by a political subdivision to:

(1) Customers of the public utility right-of-way user residing in the political subdivision; or

(2) Any specific customer or customers requesting or requiring the public utility right-of-way user to perform work for which the acquisition of a right-of-way permit is necessary.

4. The rights, duties and obligations regarding the use of the public right-of-way imposed pursuant to sections 67.1830 to 67.1846 shall be uniformly applied to all users of the public right-of-way, including the political subdivision.

67.1842. PROHIBITED ACTS BY POLITICAL SUBDIVISIONS — NO RIGHT-OF-WAY PERMIT REQUIRED FOR PROJECTS COMMENCED PRIOR TO AUGUST 28, 2001 — NO FEE REQUIRED, WHEN. — 1. In managing the public right-of-way and in imposing fees pursuant to sections 67.1830 to 67.1846, no political subdivision shall:

(1) Unlawfully discriminate among public utility right-of-way users;

(2) Grant a preference to any public utility right-of-way user;

(3) Create or erect any unreasonable requirement for entry to the public right-of-way by public utility right-of-way users;

(4) Require a telecommunications company to obtain a franchise or require a public utility right-of-way user to pay for the use of the public right-of-way, except as provided in sections 67.1830 to 67.1846; or

(5) Enter into a contract or any other agreement for providing for an exclusive use, occupancy or access to any public right-of-way.

2. A public utility right-of-way user shall not be required to apply for or obtain right-of-way permits for projects commenced prior to the effective date of this act, requiring excavation within the public right-of-way, for which the user has obtained the required consent of the political subdivision, or that are otherwise lawfully occupying or performing work within the public right-of-way. The public utility right-of-way user may be required to obtain right-of-way permits prior to any excavation work performed within the public right-of-way after the effective date of this act.

3. A political subdivision shall not collect a fee imposed pursuant to section 67.1840 through the provision of in-kind services by a public utility right-of-way user, nor require the provision of in-kind services as a condition of consent to use the political subdivision's public right-of-way; however, nothing in this subsection shall preclude requiring services of a cable television operator, open video system provider or other video programming provider as permitted by federal law.

67.1844. COMPLIANCE WITH APPLICABLE SAFETY AND CONSTRUCTION CODES REQUIRED — LICENSED CONTRACTORS AND SUBCONTRACTORS REQUIRED, WHEN. — 1. The performance of excavation work in the public right-of-way shall be in accordance with the applicable safety and construction codes. Nothing in sections 67.1830 to 67.1846 shall be construed as limiting the authority of the political subdivision to require public utility right-of-way users to comply with national safety codes and all other applicable zoning and safety ordinances, to the extent not inconsistent with public service commission laws or administrative rules.

2. Any contractor or subcontractor used for the performance of excavation work in the public right-of-way shall be properly licensed pursuant to the laws of the state and all applicable local ordinances if required, and each contractor or subcontractor shall have the same obligations with respect to its work as a public utility right-of-way user would have pursuant to sections 67.1830 to 67.1846 and applicable laws if the work were performed by the public utility. The public utility right-of-way user shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its permits and applicable law and responsible for promptly correcting acts or omissions by any contractor or subcontractor.

67.1846. EXCEPTIONS TO APPLICABILITY OF RIGHT-OF-WAY LAWS. — 1. Nothing in sections 67.1830 to 67.1846 relieves the political subdivision of any obligations under an existing franchise agreement in effect on May 1, 2001. Nothing in sections 67.1830 to 67.1846 will apply to that portion of any ordinance passed prior to May 1, 2001, which establishes a street degradation fee. Nothing in sections 67.1830 to 67.1846 shall be construed as limiting the authority of county highway engineers or relieving public utility right-of-way users from any obligations set forth in chapters 229 to 231, RSMo. Nothing in sections 67.1830 to 67.1846 shall be deemed to relieve a public utility right-of-way user of the provisions of an existing franchise, franchise fees, license or other agreement or permit in effect on May 1, 2001. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision or public utility right-of-way user from renewing or entering into a

new or existing franchise, as long as all other public utility right-of-way users have use of the public right-of-way on a nondiscriminatory basis. Nothing in sections 67.1830 to 67.1846 shall prevent a grandfathered political subdivision from enacting new ordinances, including amendments of existing ordinances, charging a public utility right-of-way user a fair and reasonable linear foot fee or antenna fee or from enforcing or renewing existing linear foot ordinances for use of the right-of-way, provided that the public utility right-of-way user either:

(1) Is entitled under the ordinance to a credit for any amounts paid as business license taxes or gross receipts taxes; or

(2) Is not required by the political subdivision to pay the linear foot fee if the public utility right-of-way user is paying gross receipts taxes.

For purposes of this section, a "grandfathered political subdivision" is any political subdivision which has, prior to May 1, 2001, enacted one or more ordinances reflecting a policy of imposing any linear foot fees on any public utility right-of-way user, including ordinances which were specific to particular public right-of-way users. Any existing ordinance or new ordinance passed by a grandfathered political subdivision providing for payment of the greater of a linear foot fee or a gross receipts fee shall be enforceable only with respect to the linear foot fee.

2. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from enacting, renewing or enforcing provisions of an ordinance to require a business license tax, sales tax, occupation tax, franchise tax or franchise fee, property tax or other similar tax, to the extent consistent with federal law. Nothing in sections 67.1830 to 67.1846 shall prohibit a political subdivision from enacting, enforcing or renewing provisions of an ordinance to require a gross receipts tax pursuant to chapter 66, chapter 92, or chapter 94, RSMo. For purposes of this subsection, the term "franchise fee" shall mean "franchise tax".

Approved July 12, 2001

SB 371 [HS HCS SB 371]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Modifies and clarifies provisions of certain state retirement systems.

AN ACT to repeal sections 104.010, 104.170, 104.312, 104.330, 104.339, 104.345, 104.372, 104.374, 104.380, 104.395, 104.401, 104.420, 104.450, 104.515, 104.518, 104.530, 104.600, 104.601, 104.602, 104.1003, 104.1021, 104.1024, 104.1027, 104.1030, 104.1039, 104.1051, 104.1072, 104.1078, 104.1093 and 476.524, RSMo 2000, relating to certain public retirement systems administered pursuant to chapter 104, RSMo, and to enact in lieu thereof thirty-eight new sections relating to the same subject.

SECTION

A. Enacting clause.
104.010. Definitions.
104.170. Officers of board of trustees, election, terms, duties — executive director, appointment, powers and duties — process to be served on executive director.
104.175. Liability insurance coverage authorized, state highways and transportation commission.
104.312. Pension, annuity, benefit, right, and allowance is marital property — division of benefits order, requirements — information for courts — rejection of division of benefits order — basis for payment to alternate payee.

104.330. State employees to be members — military service, effect.
104.339. Creditable prior service, members entitled to.
104.345. Circuit clerks entitled to prior service credit, when — certain circuit clerks to be appointed consultants, duties, compensation to be creditable service, when — clerks entitled to refund of contribution, procedure, also entitled to prior service credit.
104.372. General assembly members and elective state officers, survivor's income payments, when, amount — death before retirement survivor's benefit — creditable prior service for certain teachers employed by state — surviving spouse, special consultant — payments in lieu of other provisions, when.
104.374. State employee's normal annuity, computation — absences counted as membership service, when — employees and general assembly members continuing to serve, cost-of-living increases on retirement or death.
104.380. Retired members elected to state office, effect of — reemployment of retired members, effect of.
104.395. Options available to members in lieu of normal annuity — spouse as designated beneficiary, when — statement that spouse aware of retirement plan elected — reversion of amount of benefit, conditions — special consultant, compensation — election to be made, when.
104.401. Retirement requirements and procedure, annuity or deferred normal annuity, payment to commence when — temporary waiver of right to receive, effect, limitation.
104.420. Death before retirement, member or disabled member — surviving spouse to receive benefits — if no qualifying surviving spouse, children's benefits.
104.450. Board of trustees, membership of — appointed members and elected members, how chosen.
104.515. Insurance and disability benefits to be kept in separate accounts — state's contribution, amount, contribution to be made from highway funds for certain employees, when — employees and families, who are covered for medical insurance — premium collection for amount not covered by state — special consultants, duties, compensation, benefits.
104.518. Disability income benefits, employees covered — certain members of water patrol eligible.
104.530. Actions by and against system — process, how served — venue.
104.600. Service credit rights of employee having worked for both transportation department and other state agency.
104.601. Years of service to include unused accumulated sick leave, when — credited sick leave not counted for vesting purposes — applicable also to teachers' and school employees' retirement system.
104.602. Creditable service not previously credited to members of either system to be credited, when — duplicate credit prohibited — death of a member prior to exercise of transfer rights, rights of survivor.
104.625. Annuities and lump sum payments, when, determination of amount.
104.1003. Definitions.
104.1021. Credited service determined by board — calculation.
104.1024. Retirement, application — annuity payments, how paid, amount — election to receive annuity or lump sum payment for certain employees, determination of amount.
104.1027. Options for election of annuity reduction — spouse's benefits.
104.1030. Death prior to annuity starting date, effect of — surviving spouse's benefits — applicability to members of general assembly and statewide officials.
104.1039. Reemployment of a retiree, effect on annuity.
104.1051. Annuity deemed marital property — division of benefits.
104.1072. Life insurance benefits — medical insurance for certain retirees.
104.1078. Separate accounts established for benefits — contributions by the state — board to determine premiums.
104.1093. Designation of an agent — revocation of agent's authority.
104.1200. Definitions.
104.1205. Duties of board.
104.1210. No creditable service for outside employee or member, when — information provided by institutions and administrators, when.
104.1215. Outside employee's election for membership, when.
476.517. One-time retirement plan election for certain judges.
476.524. Judge who served in armed forces may elect to purchase creditable prior service, limitation — amount of contribution — payment period — treatment of payments.
1. Certain legal advisors to be made special consultants on problems of retirement — legal advisor defined.
2. Spouse defined.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 104.010, 104.170, 104.312, 104.330, 104.339, 104.345, 104.372, 104.374, 104.380, 104.395, 104.401, 104.420, 104.450, 104.515, 104.518, 104.530, 104.600, 104.601, 104.602, 104.1003, 104.1021, 104.1024, 104.1027, 104.1030, 104.1039, 104.1051, 104.1072, 104.1078, 104.1093 and 476.524, RSMo 2000, are repealed and thirty-eight new sections enacted in lieu thereof, to be known as sections 104.010, 104.170, 104.175, 104.312, 104.330, 104.339, 104.345, 104.372, 104.374, 104.380, 104.395,

104.401, 104.420, 104.450, 104.515, 104.518, 104.530, 104.601, 104.602, 104.625, 104.1003, 104.1021, 104.1024, 104.1027, 104.1030, 104.1039, 104.1051, 104.1072, 104.1078, 104.1093, 104.1200, 104.1205, 104.1210, 104.1215, 476.517, 476.524, 1 and 2 to read as follows:

104.010. DEFINITIONS. — 1. The following words and phrases as used in sections 104.010 to 104.800, unless a different meaning is plainly required by the context, shall mean:

(1) "Accumulated contributions", the sum of all deductions for retirement benefit purposes from a member's compensation which shall be credited to the member's individual account and interest allowed thereon;

(2) "Active armed warfare", any declared war, or the Korean or Vietnamese Conflict;

(3) "Actuarial equivalent", a benefit which, when computed upon the basis of actuarial tables and interest, is equal in value to a certain amount or other benefit;

(4) "Actuarial tables", the actuarial tables approved and in use by a board at any given time;

(5) "Actuary", the actuary who is a member of the American Academy of Actuaries or who is an enrolled actuary under the Employee Retirement Income Security Act of 1974 and who is employed by a board at any given time;

(6) "Annuity", annual payments, made in equal monthly installments, to a retired member from funds provided for in, or authorized by, this chapter;

(7) "Average compensation", the average compensation of a member for the thirty-six consecutive months of service prior to retirement when the member's compensation was greatest; or if the member is on workers' compensation leave of absence or a medical leave of absence due to an employee illness, the amount of compensation the member would have received may be used, as reported and verified by the employing department; or if the member had less than thirty-six months of service, the average annual compensation paid to the member during the period up to thirty-six months for which the member received creditable service when the member's compensation was the greatest; or if the member is on military leave, the amount of compensation the member would have received may be used as reported and verified by the employing department or, if such amount is not determinable, the amount of the employee's average rate of compensation during the twelve-month period immediately preceding such period of leave, or if shorter, the period of employment immediately preceding such period of leave;

(8) "Beneficiary", any person entitled to or nominated by a member or retiree who may be legally entitled to receive benefits pursuant to this chapter;

(9) "Biennial assembly", the completion of no less than two years of creditable service or creditable prior service by a member of the general assembly;

(10) "Board of trustees", "board", or "trustees", a board of trustees as established for the applicable system pursuant to this chapter;

(11) "Chapter", sections 104.010 to 104.800;

(12) "Compensation":

(a) All salary and wages payable out of any state, federal, trust, or other funds to an employee for personal services performed for a department; but including only amounts for which contributions have been made in accordance with section 104.436, or section 104.070, whichever is applicable, and excluding any nonrecurring single sum payments or amounts paid after the member's termination of employment unless such amounts paid after such termination are a final installment of salary or wages at the same rate as in effect immediately prior to termination of employment in accordance with a state payroll system adopted on or after January 1, 2000, or any other one-time payments made as a result of such payroll system;

(b) All salary and wages which would have been payable out of any state, federal, trust or other funds to an employee on workers' compensation leave of absence during the period the employee is receiving a weekly workers' compensation benefit, as reported and verified by the employing department;

(c) Effective December 31, 1995, compensation in excess of the limitations set forth in Internal Revenue Code Section 401(a)(17) shall be disregarded. The limitation on compensation

for eligible employees shall not be less than the amount which was allowed to be taken into account under the system as in effect on July 1, 1993. For this purpose, an "eligible employee" is an individual who was a member of the system before the first plan year beginning after December 31, 1995;

(13) "Consumer price index", the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as approved by a board, as such index is defined and officially reported by the United States Department of Labor, or its successor agency;

(14) "Creditable prior service", the service of an employee which was either rendered prior to the establishment of a system, or prior to the date the employee last became a member of a system, and which is recognized in determining the member's eligibility and for the amount of the member's benefits under a system;

(15) "Creditable service", the sum of membership service and creditable prior service, to the extent such service is standing to a member's credit as provided in this chapter; except that in no case shall more than one day of creditable service or creditable prior service be credited any member for any one calendar day of eligible service credit as provided by law;

(16) "Deferred normal annuity", the annuity payable to any former employee who terminated employment as an employee or otherwise withdrew from service with a vested right to a normal annuity, payable at a future date;

(17) "Department", any department**[**, institution, board, commission, officer, court, or any agency of the state government receiving state appropriations, including allocated funds from the federal government, and having power to certify payrolls authorizing payments of salary or wages against appropriations made by the federal government or the state legislature from any state fund, or against trusts or allocated funds held by the state treasurer**] or agency of the executive, legislative or judicial branch of the state of Missouri receiving state appropriations, including allocated funds from the federal government but not including any body corporate or politic unless its employees are eligible for retirement coverage from a system pursuant to this chapter as otherwise provided by law**;

(18) "Disability benefits", benefits paid to any employee while totally disabled as provided in this chapter;

(19) "Early retirement age", a member's attainment of fifty-five years of age and the completion of ten or more years of creditable service, except for uniformed members of the water patrol;

(20) "Employee":

(a) Any elective or appointive officer or person employed by the state who is employed, promoted or transferred by a department into a new or existing position and earns a salary or wage in a position normally requiring the performance by the person of duties during not less than one thousand hours per year, including each member of the general assembly but not including any patient or inmate of any state, charitable, penal or correctional institution. **Beginning September 1, 2001, the term "year" as used in this subdivision shall mean the twelve-month period beginning on the first day of employment.** However, persons who are members of the public school retirement system and who are employed by a state agency other than an institution of higher learning shall be deemed employees for purposes of participating in all insurance programs administered by a board established pursuant to section 104.450. This definition shall not exclude any employee as defined in this subdivision who is covered only under the federal Old Age and Survivors' Insurance Act, as amended. As used in this chapter, the term "employee" shall include:

a. Persons who are currently receiving annuities or other retirement benefits from some other retirement or benefit fund, so long as they are not simultaneously accumulating creditable service in another retirement or benefit system which will be used to determine eligibility for or the amount of a future retirement benefit;

b. Persons who have elected to become or who have been made members of a system pursuant to section 104.342;

(b) Any person who has performed services in the employ of the general assembly or either house thereof, or any employee of any member of the general assembly while acting in the person's official capacity as a member, and whose position does not normally require the person to perform duties during at least one thousand hours per year, with a month of service being any monthly pay period in which the employee was paid for full-time employment for that monthly period;

(c) "Employee" does not include special consultants employed pursuant to section 104.610;

(d) As used in this chapter, the hours governing the definition of employee shall be applied only from August 13, 1988, forward;

(e) The system shall consider a person who is employed in multiple positions simultaneously within a single agency to be working in a single position for purposes of determining whether the person is an employee as defined in this subdivision;

(21) "Employer", a department of the state;

(22) "Executive director", the executive director employed by a board established pursuant to the provisions of this chapter;

(23) "Fiscal year", the period beginning July first in any year and ending June thirtieth the following year;

(24) "Full biennial assembly", the period of time beginning on the first day the general assembly convenes for a first regular session until the last day of the following year;

(25) "Fund", the benefit fund of a system established pursuant to this chapter;

(26) "Interest", interest at such rate as shall be determined and prescribed from time to time by a board;

(27) "Member", as used in sections 104.010 to 104.272 or 104.600 to 104.800 shall mean a member of the highways and transportation employees' and highway patrol retirement system without regard to whether or not the member has been retired. "Member", as used in sections 104.010 and 104.312 to 104.800, shall mean a member of the Missouri state employees' retirement system without regard to whether or not the member has been retired;

(28) "Membership service", the service after becoming a member that is recognized in determining a member's eligibility for and the amount of a member's benefits under a system;

(29) "Military service", all active service performed in the United States Army, Air Force, Navy, Marine Corps, Coast Guard, and members of the United States Public Health Service or any women's auxiliary thereof; and service in the Army national guard and Air national guard when engaged in active duty for training, inactive duty training or full-time national guard duty, and service by any other category of persons designated by the President in time of war or emergency;

(30) "Normal annuity", the annuity provided to a member upon retirement at or after the member's normal retirement age;

(31) "Normal retirement age", an employee's attainment of sixty-five years of age and the completion of four years of creditable service or the attainment of age sixty-five years of age and the completion of five years of creditable service by a member who has terminated employment and is entitled to a deferred normal annuity or the member's attainment of age sixty and the completion of fifteen years of creditable service, except that normal retirement age for uniformed members of the highway patrol shall be fifty-five years of age and the completion of four years of creditable service and uniformed employees of the water patrol shall be fifty-five years of age and the completion of four years of creditable service or the attainment of age fifty-five and the completion of five years of creditable service by a member of the water patrol who has terminated employment and is entitled to a deferred normal annuity and members of the general assembly shall be fifty-five years of age and the completion of three full biennial assemblies. Notwithstanding any other provision of law to the contrary, a member of the highways and transportation employees' and highway patrol retirement system or a member of the Missouri state employees' retirement system shall be entitled to retire with a normal annuity and shall be entitled to elect any of the survivor benefit options and shall also be entitled to any other

provisions of this chapter that relate to retirement with a normal annuity if the sum of the member's age and creditable service equals eighty years or more and if the member is at least fifty years of age;

(32) "Payroll deduction", deductions made from an employee's compensation;

(33) "Prior service credit", the service of an employee rendered prior to the date the employee became a member which service is recognized in determining the member's eligibility for benefits from a system but not in determining the amount of the member's benefit;

(34) "Reduced annuity", an actuarial equivalent of a normal annuity;

(35) "Retiree", a member who is not an employee and who is receiving an annuity from a system pursuant to this chapter;

(36) "System" or "retirement system", the highways and transportation employees' and highway patrol retirement system, as created by sections 104.010 to 104.270, or sections 104.600 to 104.800, or the Missouri state employees' retirement system as created by sections 104.320 to 104.800;

(37) "Uniformed members of the highway patrol", the superintendent, lieutenant colonel, majors, captains, director of radio, lieutenants, sergeants, corporals, and patrolmen of the Missouri state highway patrol who normally appear in uniform;

(38) "Uniformed members of the water patrol", employees of the Missouri state water patrol of the department of public safety who are classified as water patrol officers who have taken the oath of office prescribed by the provisions of chapter 306, RSMo, and who have those peace officer powers given by the provisions of chapter 306, RSMo;

(39) "Vesting service", the sum of a member's prior service credit and creditable service which is recognized in determining the member's eligibility for benefits under the system.

2. Benefits paid pursuant to the provisions of this chapter shall not exceed the limitations of Internal Revenue Code Section 415, the provisions of which are hereby incorporated by reference.

104.170. OFFICERS OF BOARD OF TRUSTEES, ELECTION, TERMS, DUTIES — EXECUTIVE DIRECTOR, APPOINTMENT, POWERS AND DUTIES — PROCESS TO BE SERVED ON EXECUTIVE DIRECTOR. — 1. The board shall elect by secret ballot one member as **[**chairman**] chair** and one member as vice **[**chairman**] chair** in January of each year. The **[**chairman**] chair** may not serve more than two consecutive terms beginning after August 13, 1988. The **[**chairman**] chair** shall preside over meetings of the board and perform such other duties as may be required by action of the board. The vice **[**chairman**] chair** shall perform the duties of the **[**chairman**] chair** in the absence of the latter or upon **[**his**] the chair's** inability or refusal to act.

2. The board shall appoint a full-time executive director, who shall not be compensated for any other duties under the **state** highways and transportation commission. The executive director shall have charge of the offices and records and shall hire such employees that **[**he**] the executive director** deems necessary subject to the direction of the board. **The executive director and all other employees of the system shall be members of the system and the board shall make contributions to provide the insurance benefits available pursuant to section 104.270 on the same basis as provided for other state employees pursuant to the provisions of section 104.515, and also shall make contributions to provide the retirement benefits on the same basis as provided for other employees pursuant to the provisions of sections 104.090 to 104.260.**

3. Any summons or other writ issued by the courts of the state shall be served upon the **executive** director or, in **[**his**] the executive director's** absence, on the assistant director.

104.175. LIABILITY INSURANCE COVERAGE AUTHORIZED, STATE HIGHWAYS AND TRANSPORTATION COMMISSION. — **The state highways and transportation commission is authorized, when requested by the highways and transportation employees' and highway patrol retirement system, to provide liability insurance covering the operation of all**

vehicles owned or leased or used by the system. The commission is also authorized, when requested by the system, to provide workers' compensation coverage for the executive director and employees of the system. In the event the commission provides such insurance coverage, the system shall reimburse the commission for all costs of such coverage.

104.312. PENSION, ANNUITY, BENEFIT, RIGHT, AND ALLOWANCE IS MARITAL PROPERTY — DIVISION OF BENEFITS ORDER, REQUIREMENTS — INFORMATION FOR COURTS — REJECTION OF DIVISION OF BENEFITS ORDER — BASIS FOR PAYMENT TO ALTERNATE PAYEE. — 1. The provisions of subsection 2 of section 104.250, subsection 2 of section 104.540, subsection 2 of section 287.820, RSMo, and section 476.688, RSMo, to the contrary notwithstanding, any pension, annuity, benefit, right, or retirement allowance provided pursuant to this chapter, chapter 287, RSMo, or chapter 476, RSMo, is marital property and after August 28, 1994, a court of competent jurisdiction may divide the pension, annuity, benefits, rights, and retirement allowance provided pursuant to this chapter, chapter 287, RSMo, or chapter 476, RSMo, between the parties to any action for dissolution of marriage. A division of benefits order issued pursuant to this section:

(1) Shall not require the applicable retirement system to provide any form or type of annuity **or retirement plan** not selected by the member and not normally made available by that system;

(2) Shall not require the applicable retirement system to commence payments until the member submits a valid application for an annuity and the annuity becomes payable in accordance with the application;

(3) Shall identify the monthly amount to be paid to the alternate payee, which shall **be expressed as a percentage and which shall** not exceed fifty percent of the amount of the member's annuity accrued during **all or part of** the time while the member and alternate payee were married**;** and **which shall be** based on the member's vested annuity on the date of the dissolution of marriage **or an earlier date as specified in the order**, **[**and the**] which** amount shall be adjusted proportionately if the member's annuity is reduced due to early retirement **and the percentage established shall be applied to the pro rata portion of any lump sum distribution pursuant to subsection 6 of section 104.335, accrued during the time while the member and alternate payee were married**;

(4) Shall not require the payment of an annuity amount to the member and alternate payee which in total exceeds the amount which the member would have received without regard to the order;

(5) Shall provide that any benefit formula increases, additional years of service, increased average compensation or other type of increases accrued after the date of the dissolution of marriage shall accrue solely to the benefit of the member**[**,**];** except that **on or after September 1, 2001, any** annual benefit **[**increases**] increase** shall **[**be applied to the amount received by both the member and the alternate payee**] not be considered to be an increase accrued after the date of termination of marriage and shall be part of the monthly amount subject to division pursuant to any order issued after September 1, 2001**;

(6) Shall terminate upon the death of either the member or the alternate payee, whichever occurs first;

(7) Shall not create an interest which is assignable or subject to any legal process;

(8) Shall include the name, address and Social Security number of both the member and the alternate payee, and the identity of the retirement system to which it applies;

(9) Shall be consistent with any other division of benefits orders which are applicable to the same member.

2. A system established by this chapter shall provide the court having jurisdiction of a dissolution of marriage proceeding or the parties to the proceeding with information necessary to issue a division of benefits order concerning a member of the system, upon written request

from **[**the court or the parties**]** **either the court, the member or the member's spouse,** which cites this section and identifies the case number and parties.

3. A system established by this chapter shall have the discretionary authority to reject a division of benefits order for the following reasons:

(1) The order does not clearly state the rights of the member and the alternate payee;

(2) The order is inconsistent with any law governing the retirement system.

4. The amount paid to an alternate payee under an order issued pursuant to this section shall be based on what the member would have received had the member elected coverage under the closed plan pursuant to section 104.1015 regardless of the actual election made by the member pursuant to that section; except that any annual benefit increases subject to division shall be based on the actual annual benefit increases received after the retirement plan election.

104.330. STATE EMPLOYEES TO BE MEMBERS — MILITARY SERVICE, EFFECT. — 1. As an incident to his **or her** contract of employment or continued employment, each employee of the state shall become a member of the system on the first day of the first month following the original effective date of sections 104.310 to 104.540, September 1, 1957, and every person thereafter becoming an employee shall become a member at the time of employment. Each employee's membership shall continue as long as the member continues to be an employee or be on leave for military service or training as hereinafter provided; or receive or be eligible to receive an annuity or benefit.

2. **[**Any military service or training completed prior to December 3, 1974, must be that to which an employee shall have become obligated, either irrespective of the member's consent under the mandatory provisions of law, or as a volunteer while the United States is engaged in actual active armed warfare, if within ninety days after becoming eligible for release from this service obligation, the member shall have reentered the employment of a department, and within the number of months after such reemployment which is equal to the number of months the member was in the service, shall have paid into the fund, in addition to the member's current payroll deductions, the actuarial equivalent, at the time the payments are completed, of all payroll deductions at the salary rate which the member was receiving when the member went on leave and which would have been made if the member had been an employee at this rate continuously up to the time of reentering employment.**]** Any **member who completes** military service or training **[**completed**]** on or after December 3, 1974, **[**must be that to which the employee's reemployment rights were guaranteed**]** **shall receive creditable service and salary credit mandated** by federal law under the Vietnam Era Veteran's Readjustment Act of 1974 **and the Uniformed Services Employment and Reemployment Rights Act of 1994** or any successor thereto, **[**if the member shall have reentered the employment of a department after the member's release from military service or training within the time prescribed by such law**]** **or as otherwise provided under federal or state law**.

104.339. CREDITABLE PRIOR SERVICE, MEMBERS ENTITLED TO. — 1. Any employee who became a member of the system, on the first day of the first month following the original effective date of sections 104.310 to 104.540, September 1, 1957, shall be given creditable prior service with the state. All such creditable prior service must be established to the satisfaction of the board.

2. **[**Any person who, on August 29, 1959, was an employee of the state government and a member of either the transportation department employees' and highway patrol retirement system or the Missouri state employees' retirement system and who, whether or not he became a member of either system on the original effective date of sections 104.310 to 104.540, September 1, 1957, had been since January 7, 1959, continuously in the employ of the state government in positions which would on August 29, 1959, have come under one or the other of the retirement systems, is entitled to credit for all of his prior service with the state whether it

was as an employee of the transportation department, highway patrol or any other department as the term is defined in section 104.010.

3.**]** Any member of the system employed on or after August 13, 1988, and who served as an employee prior to September 1, 1957, but was not an employee on that date, shall be entitled to the creditable prior service that such employee would have been entitled to had such employee become a member of the retirement system on the date of its inception**[**, if such employee has or attains one year of continuous membership service**]**.

104.345. CIRCUIT CLERKS ENTITLED TO PRIOR SERVICE CREDIT, WHEN — CERTAIN CIRCUIT CLERKS TO BE APPOINTED CONSULTANTS, DUTIES, COMPENSATION TO BE CREDITABLE SERVICE, WHEN — CLERKS ENTITLED TO REFUND OF CONTRIBUTION, PROCEDURE, ALSO ENTITLED TO PRIOR SERVICE CREDIT. — 1. Any circuit clerk holding office or employment as such on or after August 28, 1989, for service rendered as an employee of any county or other political subdivision for the purposes of performing duties for the judicial system, is entitled to creditable prior service **[**under**] pursuant to** the provisions of this chapter in the Missouri state employees' retirement system, provided such period of service has not been included for purposes of qualification for any other retirement system.

2. Any member who was a circuit clerk on July 1, 1980, and whose employment as a circuit clerk terminated prior to October 1, 1989, upon application to the board shall be made, constituted, appointed, and employed by the board as a special consultant on the problems of retirement for the remainder of the person's life. Upon request of the board, the consultant shall give opinions or be available to give opinions in writing or orally in response to such requests. As compensation, the consultant shall receive creditable service for service rendered as a circuit clerk, deputy circuit clerk or division clerk, if:

(1) The member does not receive credit for the same period of service under more than one retirement system;

(2) The person made application to the board for such creditable prior service within ninety days of October 1, 1989; and

(3) The person establishes proof of such service to the satisfaction of the board.

Such person shall be a member of the Missouri state employees' retirement system and be entitled to a normal annuity or to a deferred normal annuity, based on the person's creditable service and the law in effect at the time service as a circuit clerk was terminated.

3. Notwithstanding any provision of law to the contrary, any person who is an employee on August 28, 1990, who was a circuit clerk, deputy circuit clerk or division clerk on June 30, 1981, employed by a county which participated in the local government employees' retirement system **[**under**] pursuant to** sections 70.600 to 70.755, RSMo, or which paid to the Missouri state employees' retirement system to actuarially fund the creditable prior service of such clerk, and such person elected to receive creditable prior service under this system by waiving rights to the person's accumulated contributions made or accrued while such person was a county employee or who made payment to the county as reimbursement for the costs incurred by the county to actuarially fund the creditable prior service for such person which were received by this system **[**under**] pursuant to** the provisions of this section in effect when such person became a member, upon written application filed with the board, shall be eligible to receive a refund of such accumulated contributions or payment amount. Members receiving such a refund shall not forfeit any service presently credited the member under this system but in no event shall a member receive credit for the same period of service under more than one retirement system.

4. Any actively employed member of the Missouri state employees' retirement system on or after August 28, 2000, shall be entitled to creditable prior service for service rendered as a circuit clerk, deputy circuit clerk or division clerk, if:

(1) The service had not become vested in a county or city retirement plan;

(2) The person made application to the board for such creditable prior service; and

(3) The person establishes proof of such service to the satisfaction of the board **including proof that the person worked in a position that normally required at least one thousand hours of service per year for service after October 1, 1984, or one thousand five hundred hours of service per year for service prior to October 1, 1984**.

104.372. GENERAL ASSEMBLY MEMBERS AND ELECTIVE STATE OFFICERS, SURVIVOR'S INCOME PAYMENTS, WHEN, AMOUNT — DEATH BEFORE RETIREMENT SURVIVOR'S BENEFIT — CREDITABLE PRIOR SERVICE FOR CERTAIN TEACHERS EMPLOYED BY STATE — SURVIVING SPOUSE, SPECIAL CONSULTANT — PAYMENTS IN LIEU OF OTHER PROVISIONS, WHEN. — 1. (1) In the event a person who served as a member of the general assembly or in an elective state office on or after September 1, 1976, and who retired after September 1, 1976, dies, a survivor's income in an amount equal to fifty percent of the monthly annuity the retired member was receiving at the time of the member's death shall be paid in monthly installments to such deceased retired member's surviving spouse; provided such surviving spouse was married to the deceased retired member of the general assembly or elected official on the date of the member's death; or if there is no surviving spouse eligible to receive such survivor's income, then such survivor's income shall be payable to any children under the age of twenty-one of the deceased member of the general assembly or elective official in equal shares in a total amount equal to such survivor's income that would otherwise have been paid to the surviving spouse until the children reach twenty-one years of age. The benefits shall be funded as provided in section 104.436; or

(2) Upon the death of a person who served as a member of the general assembly or in an elective state office on or after September 1, 1976, and who retired pursuant to the provisions of this chapter on or after September 1, 1976, and who terminated employment before August 28, 1988, such deceased retired member's surviving spouse, who was married to the deceased retired member on the date of the member's death, may apply to the board of trustees and shall be made, constituted, appointed and employed by the board as a special consultant on the problems of retirement, aging and other state matters for the remainder of the surviving spouse's life, and upon request of the board shall give opinions, and be available to give opinions in writing, or orally, in response to such requests. As compensation for such services, beginning the first of the month following application, such surviving spouse shall receive monthly an amount equal to fifty percent of the monthly annuity the retired member was receiving at the time of the member's death.

2. If a member of the general assembly who has served in at least three full biennial assemblies dies before retirement, pursuant to the provisions of sections 104.312 to 104.801, a survivor's benefit shall be paid in an amount equal to fifty percent of the member's accrued annuity calculated as if the member were of normal retirement age as of the member's death. The survivor's benefit shall be paid in monthly installments to such deceased member's surviving spouse; provided such surviving spouse was married to the deceased member of the general assembly on the date of the member's death; or if there is no surviving spouse eligible to receive such survivor's benefit, such survivor's benefit shall be payable to any children under the age of twenty-one of the deceased member of the general assembly in equal shares in a total amount equal to such survivor's benefit that would otherwise have been paid to the surviving spouse until the children reach twenty-one years of age.

3. In the event a person who has held one or more statewide state elective offices for a total of at least twelve years, and whose retirement benefits have been calculated and are being paid pursuant to the provisions of section 104.371, dies, a survivor's benefit in an amount equal to fifty percent of the benefits being paid the member pursuant to section 104.371 shall be paid to the member's surviving spouse. The survivor's benefits shall be paid in the manner provided in section 104.371.

4. Every member of the state employees' retirement system who had previous state employment by a state agency by virtue of which the person was a member of the public school

retirement system of Missouri and has previously withdrawn the person's employee contribution to the public school retirement system shall upon request if qualified pursuant to the provisions of this subsection receive creditable prior service in the state employees' retirement system for such service notwithstanding any other provisions of law. The public school retirement system shall pay to the state employees' retirement system an amount equal to the contribution paid to the public school retirement system on behalf of the employee by the employee's employer, and the commissioner of administration shall pay an equal amount to the state employees' retirement system from funds appropriated from the general revenue fund for such purpose. In no event shall any person receive credit for the same period of service under more than one retirement system.

5. Upon the death of a person who served as a member of the general assembly or in an elective state office before September 1, 1976, and who retired and chose a normal annuity pursuant to the provisions of this chapter, such deceased retired member's surviving spouse, who was married to the member on the date of the member's death, may apply to the board of trustees and shall be made, constituted, appointed and employed by the board as a special consultant on the problems of retirement, aging, and other state matters for the remainder of the surviving spouse's life, and upon request of the board shall give opinions, and be available to give opinions in writing, or orally, in response to such requests. As compensation for such services, beginning the first of the month following application, such surviving spouse shall receive monthly an amount equal to fifty percent of the monthly annuity the retired member was receiving at the time of the member's death.

6. Survivor benefits shall be paid pursuant to section 104.420 in lieu of any other provisions of this section to the contrary if the member of the general assembly or statewide elected official:

(1) Dies on or after August 28, 2001;

(2) Had a vested right to an annuity; and

(3) Was not receiving an annuity.

7. Survivor benefits shall be paid pursuant to section 104.395 in lieu of any other provisions of this section to the contrary if the member of the general assembly or statewide elected official elects a survivor benefit option pursuant to section 104.395, and dies on or after August 28, 2001.

104.374. STATE EMPLOYEE'S NORMAL ANNUITY, COMPUTATION — ABSENCES COUNTED AS MEMBERSHIP SERVICE, WHEN — EMPLOYEES AND GENERAL ASSEMBLY MEMBERS CONTINUING TO SERVE, COST-OF-LIVING INCREASES ON RETIREMENT OR DEATH. — 1. The normal annuity of a member, other than a member of the general assembly or a member who served in an elective state office, shall be an amount equal to one and six-tenths percent of the average compensation of the member multiplied by the number of years of creditable service of the member. Years of membership service and twelfths of a year are to be used in calculating any annuity. Absences for sickness and injury of less than twelve months **[**or for military service or training under subsection 2 of section 104.330**]** shall be counted as years of membership service.

2. In addition to the amount determined pursuant to subsection 1 of this section, the normal annuity of a uniformed member of the water patrol shall be increased by thirty-three and one-third percent of the benefit.

3. Employees who are fully vested at the age of sixty-five years and who continue to be employed by an agency covered under the system or members of the general assembly who serve in the general assembly after the age of sixty-five years shall have added to their normal annuity when they retire or die an amount equal to the total of all annual cost-of-living increases that the retired members of the system received during the years between when the employee or member of the general assembly reached sixty-five years of age and the year that the employee or member of the general assembly terminated employment or died. In no event shall the total

increase in compensation granted under this subsection and subsection 2 of section 104.612 exceed sixty-five percent of the person's normal annuity calculated at the time of retirement or death.

104.380. RETIRED MEMBERS ELECTED TO STATE OFFICE, EFFECT OF — REEMPLOYMENT OF RETIRED MEMBERS, EFFECT OF. — If a retired member is elected to any state office or is appointed to any state office or is employed by a department **[**in a position normally requiring the performance by the person of duties during not less than one thousand hours per year, the member shall not receive an annuity for any month or part of a month for which the member serves as an officer or employee, but the member shall be considered to be a new employee with no previous creditable service and must accrue creditable service in order to receive any additional annuity. Any retired member who again becomes an employee and who accrues additional creditable service and later retires shall receive an additional amount of monthly annuity calculated to include only the creditable service and the average compensation earned by the member since such employment or creditable service earned as a member of the general assembly. Years of membership service and twelfths of a year are to be used in calculating any additional annuity except for creditable service earned as a member of the general assembly, and such additional annuity shall be based on the type of service accrued. In either event, the original annuity and the additional annuity, if any, shall be paid commencing with the end of the first month after the month during which the member's term of office has been completed, or the member's employment terminated. If a retired member is employed by a department in a position that does not normally require the person to perform duties during at least one thousand hours per year, the member shall not be considered an employee as defined pursuant to section 104.010.**] and works more than one thousand hours per year regardless of the number of positions held on or after the first day of employment, the retired member shall not receive an annuity or additional creditable service for any month or part of a month for which the retired member is so employed. The system shall recover any benefit payments received by the retiree during any year that the retiree works more than one thousand hours pursuant to section 104.490. The term "year" as used in this section shall mean the twelve-month period beginning on the annuity starting date and each subsequent year thereafter. The provisions of this section shall apply to all retired members employed on or after September 1, 2001, regardless of when the retired member was first employed. Any person who is an employee on or after August 28, 2001, retires and is subsequently employed in a position covered by the highways and transportation employees' and highway patrol retirement system shall not be eligible to receive retirement benefits or additional creditable service from the system.**

104.395. OPTIONS AVAILABLE TO MEMBERS IN LIEU OF NORMAL ANNUITY — SPOUSE AS DESIGNATED BENEFICIARY, WHEN — STATEMENT THAT SPOUSE AWARE OF RETIREMENT PLAN ELECTED — REVERSION OF AMOUNT OF BENEFIT, CONDITIONS — SPECIAL CONSULTANT, COMPENSATION — ELECTION TO BE MADE, WHEN. — 1. In lieu of the normal annuity otherwise payable to a member pursuant to section 104.335, **104.370, 104.371,** 104.374 or 104.400, and prior to the last business day of the month before the annuity starting date pursuant to section 104.401, a member shall elect whether or not to have such member's normal annuity reduced as provided by the options set forth in this section; provided that if such election has not been made within such time, annuity payments due beginning on and after such annuity starting date shall be made the month following the receipt by the system of such election, and further provided, that if such person dies after such annuity starting date but before making such election, no benefits shall be paid except as required pursuant to section 104.420:

Option 1. An actuarial reduction approved by the board of the member's annuity in reduced monthly payments for life during retirement with the provision that upon the member's death the reduced annuity at the date of the member's death shall be continued throughout the life of, and

be paid to, the member's spouse to whom the member was married at the date of retirement and who was nominated by the member to receive such payments in the member's application for retirement or as otherwise provided **[**under**] pursuant to** subsection 5 of this section. Such annuity shall be reduced in the same manner as an annuity under option 2 as in effect immediately prior to August 28, 1997. The surviving spouse shall designate a beneficiary to receive any final monthly payment due after the death of the surviving spouse; or

Option 2. The member's normal annuity in regular monthly payments for life during the member's retirement with the provision that upon the member's death a survivor's benefit equal to one-half the member's annuity at the date of the member's death shall be paid to the member's spouse to whom the member was married at the date of retirement and who was nominated by the member to receive such payments in the member's application for retirement or as otherwise provided **[**under**] pursuant to** subsection 5 of this section, in regular monthly payments for life. The surviving spouse shall designate a beneficiary to receive any final monthly payment due after the death of the surviving spouse; or

Option 3. An actuarial reduction approved by the board of the member's normal annuity in reduced monthly payments for the member's life with the provision that if the member dies prior to the member having received one hundred twenty monthly payments of the member's reduced annuity, the member's reduced annuity to which the member would have been entitled had the member lived shall be paid for the remainder of the one hundred twenty months' period to such person as the member shall have nominated by written designation duly executed and filed with the board. If there is no such beneficiary surviving the retirant, the reserve for such annuity for the remainder of such one hundred twenty months' period shall be paid to the retirant's estate. If such beneficiary dies after the member's date of death but before having received the remainder of the one hundred twenty monthly payments of the retiree's reduced annuity, the reserve for such annuity for the remainder of such one hundred twenty-month period shall be paid to the beneficiary's estate; or

Option 4. An actuarial reduction approved by the board of the member's normal annuity in reduced monthly payments for the member's life with the provision that if the member dies prior to the member having received sixty monthly payments of the member's reduced annuity, the member's reduced annuity to which the member would have been entitled had the member lived shall be paid for the remainder of the sixty months' period to such person as the member shall have nominated by written designation duly executed and filed with the board. If there be no such beneficiary surviving the retirant, the reserve for such annuity for the remainder of such sixty months' period shall be paid to the retirant's estate. If such beneficiary dies after the member's date of death but before having received the remainder of the sixty monthly payments of the retiree's reduced annuity, the reserve for such annuity for the remainder of the sixty-month period shall be paid to the beneficiary's estate.

2. Effective July 1, 2000, if a member is married as of the annuity starting date to a person who has been the member's spouse, the member's annuity shall be paid pursuant to the provisions of either option 1 or option 2 as set forth in subsection 1 of this section, at the member's choice, with the spouse as the member's designated beneficiary unless the spouse consents in writing to the member electing another available form of payment.

3. For members who retire on or after August 28, 1995, in the event such member elected a joint and survivor option **[**under**] pursuant to** the provisions of this section and the member's eligible spouse or eligible former spouse precedes the member in death, the member's annuity shall revert effective the first of the month following the death of the spouse or eligible former spouse regardless of when the board receives the member's written application for the benefit provided in this subsection, to an amount equal to the member's normal annuity, as adjusted for early retirement if applicable; such benefit shall include any increases the member would have received since the date of retirement had the member elected a normal annuity.

4. Effective on or after August 28, 1995, any retired member who had elected a joint and survivor option and whose spouse or eligible former spouse precedes or preceded the member

in death shall upon application to the board be made, constituted, appointed and employed by the board as a special consultant on the problems of retirement, aging and other state matters. As a special consultant pursuant to the provisions of this section, the member's reduced annuity shall revert to a normal annuity as adjusted for early retirement, if applicable, effective the first of the month following the death of the spouse or eligible former spouse or August 28, 1995, whichever is later, regardless of when the board receives the member's written application; such annuity shall include any increases the retired member would have received since the date of retirement had the member elected a normal annuity.

5. Effective July 1, 2000, a member may make an election under option 1 or 2 after the date retirement benefits are initiated if the member makes such election within one year from the date of marriage or July 1, 2000, whichever is later, under any of the following circumstances:

(1) The member elected to receive a normal annuity and was not eligible to elect option 1 or 2 on the date retirement benefits were initiated; or

(2) The member's annuity reverted to a normal annuity pursuant to subsection 3 or 4 of this section and the member remarried.

6. Any person who terminates employment or retires prior to July 1, 2000, shall be made, constituted, appointed and employed by the board as a special consultant on the problems of retirement, aging and other state matters, and for such services shall be eligible to elect to receive the benefits described in subsection 5 of this section.

7. Effective September 1, 2001, the retirement application of any member who fails to make an election pursuant to subsection 1 of this section within ninety days of the annuity starting date contained in such retirement application shall be nullified. Any member whose retirement application is nullified shall not receive retirement benefits until the member files a new application for retirement pursuant to section 104.401 and makes the election pursuant to subsection 1 of this section. In no event shall any retroactive retirement benefits be paid.

104.401. RETIREMENT REQUIREMENTS AND PROCEDURE, ANNUITY OR DEFERRED NORMAL ANNUITY, PAYMENT TO COMMENCE WHEN — TEMPORARY WAIVER OF RIGHT TO RECEIVE, EFFECT, LIMITATION. — 1. Any member may retire with the annuity provided for in section 104.335, 104.370, 104.371, 104.374 or 104.400 upon the member's written application to the board designating the annuity starting date which shall be the first day of the month with respect to which an amount is paid as annuity; except that at the time of the annuity starting date, the member must have attained the normal retirement age or meet the eligibility requirements of subsection 2 of section 104.400 and must have sufficient years of creditable service. The annuity starting date shall **not** be **[**not less than thirty days nor more than ninety days subsequent to the execution and filing of such application**] earlier than the first day of the second month following the month of the execution and filing of such application nor later than the first day of the fourth month following the month of the execution and filing of such application**. The annuity shall commence in the month of the annuity starting date specified by the member in such application. The payment of the monthly service retirement annuity shall be made by the last day of each month, providing all documentation required pursuant to section 104.395 for the calculation and payment of the benefits is received by the board. The member shall designate a beneficiary to receive any final monthly payment due after the death of the member if no survivor annuity is payable.

2. Nothing in sections 104.010 and 104.320 to 104.800 shall be construed as prohibiting a member from waiving the member's right to receive the member's monthly annuity for a period of time that the member chooses. However, the waiver may not extend beyond the age permitted by Section 401(a)(9) of the Internal Revenue Code. The waiver shall be final as to benefits waived.

104.420. DEATH BEFORE RETIREMENT, MEMBER OR DISABLED MEMBER — SURVIVING SPOUSE TO RECEIVE BENEFITS — IF NO QUALIFYING SURVIVING SPOUSE, CHILDREN'S BENEFITS. — 1. Unless otherwise provided by law, if a member or disabled member **[**has five or more years of vesting service and**]** **who has a vested right to a normal annuity** dies prior to retirement, regardless of the age of the member at the time of death, the member's or disabled member's surviving spouse, to whom the member or disabled member was married on the date of the member's death, if any, shall receive the reduced survivorship benefits provided in option 1 of section 104.395 calculated as if the member were of normal retirement age and had retired as of the date of the member's death and had elected option 1.

2. If there is no eligible surviving spouse, **or when a spouse annuity has ceased to be payable,** the member's or disabled member's eligible surviving children under twenty-one years of age shall receive monthly, in equal shares, an amount equal to **[**one-half**]** **eighty percent** of the member's or disabled member's accrued annuity calculated as if the member or disabled member were of a normal retirement age and retired as of the date of death. Benefits otherwise payable to a child under eighteen years of age shall be payable to the surviving parent as natural guardian of such child if such parent has custody or assumes custody of such minor child, or to the legal guardian of such child, until such child attains age eighteen; thereafter, the benefit may be paid to the child until age twenty-one**; provided the age twenty-one maximum shall be extended for any child who has been found totally incapacitated by a court of competent jurisdiction**.

3. No benefit is payable pursuant to this section if no eligible surviving spouse or children under twenty-one years of age survive the member or disabled member. Benefits cease pursuant to this section when there is no eligible surviving beneficiary through either death of the eligible surviving spouse or through either death or the attainment of twenty-one years of age by the eligible surviving children. If the member's or disabled member's surviving children are receiving equal shares of the benefit described in subsection 2 of this section, and one or more of such children become ineligible by reason of death or the attainment of twenty-one years of age, the benefit shall be reallocated so that the remaining eligible children receive equal shares of the total benefit as described in subsection 2 of this section.

4. For the purpose of computing the amount of an annuity payable pursuant to this section, if the board finds that the death was the natural and proximate result of a personal injury or disease arising out of and in the course of the member's actual performance of duty as an employee, then the minimum annuity to such member's surviving spouse or, if no surviving spouse benefits are payable, the minimum annuity that shall be divided among and paid to such member's surviving children shall be fifty percent of the member's final average compensation**; except that for members of the general assembly and statewide elected officials with twelve or more years of service, the monthly rate of compensation in effect on the date of death shall be used in lieu of final average compensation**. The vesting service requirement of subsection 1 of this section shall not apply to any annuity payable pursuant to this subsection.

104.450. BOARD OF TRUSTEES, MEMBERSHIP OF — APPOINTED MEMBERS AND ELECTED MEMBERS, HOW CHOSEN. — The board of trustees shall consist of the state treasurer, the commissioner of administration, two members of the senate appointed by the president pro tem of the senate, two members of the house of representatives appointed by the speaker of the house, two members appointed by the governor **[**for a four-year term during the governor's term of office**]**, and three members who are members of the system, one of whom shall be a retiree elected by a plurality vote of retired members and two of whom shall be employees, elected by a plurality vote of the members of the system not retired for four-year terms. The board so constituted shall determine the procedures for nomination and election of the elective board members. The first two trustees designated above shall serve as trustees during their respective terms of office **[**and**];** the legislative members shall serve as trustees **[**during their terms as members of the general assembly**]** **until such time as they resign, are no longer members of**

the general assembly, or are replaced by new appointments; and the members appointed by the governor shall serve as trustees until such time as they resign or are replaced by new appointments. Any vacancies occurring in the office of trustees shall be filled in the same manner as the office was filled previously except that vacancies occurring in the offices of the elected board members may be filled by the board of trustees until the next regularly scheduled election.

104.515. INSURANCE AND DISABILITY BENEFITS TO BE KEPT IN SEPARATE ACCOUNTS — STATE'S CONTRIBUTION, AMOUNT, CONTRIBUTION TO BE MADE FROM HIGHWAY FUNDS FOR CERTAIN EMPLOYEES, WHEN — EMPLOYEES AND FAMILIES, WHO ARE COVERED FOR MEDICAL INSURANCE — PREMIUM COLLECTION FOR AMOUNT NOT COVERED BY STATE — SPECIAL CONSULTANTS, DUTIES, COMPENSATION, BENEFITS. — 1. Separate accounts for medical, life insurance and disability benefits provided **[**under**] pursuant to** sections 104.517 and 104.518 shall be established as part of the fund. The funds, property and return on investments of the separate account shall not be commingled with any other funds, property and investment return of the system. All benefits and premiums are paid solely from the separate account for medical, life insurance and disability benefits provided **[**under**] pursuant to** this section.

2. The state shall contribute an amount as appropriated by law and approved by the governor per month **[**per employee for medical benefits and, based on competitive bids, up to five dollars per month per employee**]** for **medical benefits, life insurance and long-term disability benefits as provided pursuant to sections 104.515, 104.517 and 104.518. Such amounts shall include the cost of providing** life insurance benefits for each active employee who is a member of the Missouri state employees' retirement system, a member of the public school retirement system and who is employed by a state agency other than an institution of higher learning, a member of the retirement system established by sections 287.812 to 287.855, RSMo, the judicial retirement system, each legislator and official holding an elective state office, members not on payroll status who are receiving workers' compensation benefits, and if the state highways and transportation commission so elects, those employees who are members of the state transportation department employees' and highway patrol retirement system; if the state highways and transportation commission so elects to join the plan, the state shall contribute an amount as appropriated by law for medical benefits for those employees who are members of the transportation department employees' and highway patrol retirement system; an additional amount equal to the amount required, based on competitive bidding or determined actuarially, to fund the retired members' death benefit or life insurance benefit, or both, provided in subsection 4 of this section and the disability benefits provided in section 104.518. This amount shall be reported as a separate item in the monthly certification of required contributions which the commissioner of administration submits to the state treasurer and shall be deposited to the separate account for medical, life insurance and disability benefits. All contributions made on behalf of members of the state transportation department employees' and highway patrol retirement system shall be made from highway funds. If the highways and transportation commission so elects, the spouses and unemancipated children under twenty-three years of age of employees who are members of the state transportation department employees' and highway patrol retirement system shall be able to participate in the program of insurance benefits to cover medical expenses **[**under**] pursuant to** the provisions of subsection 3 of this section.

3. The board shall determine the premium amounts required for participating employees. The premium amounts shall be the amount, which, together with the state's contribution, is required to fund the benefits provided, taking into account necessary actuarial reserves. Separate premiums shall be established for employees' benefits and a separate premium or schedule of premiums shall be established for benefits for spouses and unemancipated children under twenty-three years of age of participating employees. The employee's premiums for spouse and children benefits shall be established to cover that portion of the cost of such benefits which is not paid for by contributions by the state. All such premium amounts shall be paid to the board

of trustees at the time that each employee's wages or salary would normally be paid. The premium amounts so remitted will be placed in the separate account for medical, life insurance and disability benefits. In lieu of the availability of premium deductions, the board may establish alternative methods for the collection of premium amounts.

4. Each special consultant eligible for life benefits employed by a board of trustees of a retirement system as provided in section 104.610 who is a member of the Missouri state life insurance plan or Missouri state transportation department and Missouri state highway patrol life insurance plan shall, in addition to duties prescribed in section 104.610 or any other law, and upon request of the board of trustees, give the board, orally or in writing, a short detailed statement on life insurance and death benefit problems affecting retirees. As compensation for the extra duty imposed by this subsection, any special consultant as defined above, other than a special consultant entitled to a deferred normal annuity **[**under**] pursuant to** section 104.035 or 104.335, who retires on or after September 28, 1985, shall receive as a part of compensation for these extra duties, a death benefit of five thousand dollars. In addition, each special consultant who is a member of the transportation department employees' and highway patrol retirement system medical insurance plan shall also provide the board, upon request of the board, orally or in writing, a short detailed statement on physical, medical and health problems affecting retirees. As compensation for this extra duty, each special consultant as defined above shall receive, in addition to all other compensation provided by law, nine dollars, or an amount equivalent to that provided to other special consultants **[**under**] pursuant to** the provisions of section 103.115, RSMo. In addition, any special consultant as defined in section 287.820, RSMo, or section 476.601, RSMo, who terminates employment and immediately retires on or after August 28, 1995, shall receive as a part of compensation for these duties, a death benefit of five thousand dollars.

5. Any former employee who is receiving disability income benefits from the Missouri state employees' retirement system or the transportation department employees' and highway patrol retirement system shall, upon application with the board of trustees of the Missouri consolidated health care plan or the transportation department employees and highway patrol medical plan, be made, constituted, appointed and employed by the respective board as a special consultant on the problems of the health of disability income recipients and, upon request of the board of trustees of each medical plan, give the board, orally or in writing, a short detailed statement of physical, medical and health problems affecting disability income recipients. As compensation for the extra duty imposed by this subsection, each such special consultant as defined in this subsection may receive, in addition to all other compensation provided by law, an amount contributed toward medical benefits coverage provided by the Missouri consolidated health care plan or the transportation employees and highway patrol medical plan pursuant to appropriations.

104.518. DISABILITY INCOME BENEFITS, EMPLOYEES COVERED — CERTAIN MEMBERS OF WATER PATROL ELIGIBLE. — 1. The board shall provide or contract, or both, for disability income benefits for employees **[**under**] pursuant to** sections 104.320 to 104.540, and persons covered by the provisions of sections 287.812 to 287.855, RSMo, and an employee covered **[**under**] pursuant to** the provisions of subdivision (4) of subsection 1 of section 476.515, RSMo, as follows:

(1) Members of the water patrol who qualify for receiving benefits **[**under**] pursuant to** subsection 1 of section 104.410 are not eligible for benefits **[**under**] pursuant to** this section. Members of the water patrol who do not qualify for receiving benefits **[**under**] pursuant to** subsection 1 of section 104.410 are eligible for benefits **[**under**] pursuant to** this section;

(2) Effective January 1, 1986, employees other than members of the water patrol who qualify for receiving benefits **[**under**] pursuant to** subsection 1 of section 104.410 shall be eligible for coverage on the first of the month following the date of employment;

(3) Definitions of disability and other rules and procedures necessary for the operation and administration of the disability benefit shall be established by the board **provided that such**

definitions, rules and procedures may be established in any contract between the board and any insurer or service organization to provide the disability benefits provided for pursuant to this section or in any policy issued to the board by such insurer or service organization;

(4) An employee may elect to waive the receipt of the disability benefit provided for **[**under**]** **pursuant to** this section at any time.

2. To the extent that the board enters or has entered into any contract with any insurer or service organization to provide the disability benefits provided for pursuant to this section:

(1) The obligation to provide such disability benefits shall be primarily that of the insurer or service organization and secondarily that of the board;

(2) Any member who has been denied disability benefits by the insurer or service organization and has exhausted all appeal procedures provided by the insurer or service organization may appeal such decision by filing a petition against the insurer or service organization in a court of law in the member's county of residence;

(3) The board and the system shall not be liable for the disability benefits provided for by an insurer or service organization pursuant to this section and shall not be subject to any cause of action with regard to disability benefits or the denial of disability benefits by the insurer or service organization unless the member has obtained judgment against the insurer or service organization for disability benefits and the insurer or service organization is unable to satisfy that judgment.

104.530. ACTIONS BY AND AGAINST SYSTEM — PROCESS, HOW SERVED — VENUE. — The Missouri state employees' retirement system may sue and be sued in its official name, but its officers and employees shall not be personally liable for acts of the system. **The board may indemnify, protect, defend and hold harmless the trustees, officers and employees of the system against all claims and suits for negligent or wrongful acts alleged to have been committed in the scope of their service or employment or under the direction of the trustees provided that the trustees, officers and employees of the system shall not be indemnified for willful misconduct or gross negligence. The board is authorized to insure against loss or liability of the trustees, officers and employees of the system that may result from claims and suits for negligent or wrongful acts alleged to have been committed in the scope of their service or employment or under the direction of the trustees. This insurance shall be carried through a company that is licensed to write such coverage in this state.** The service of all legal process and of all notices which may be required to be in writing, whether in legal proceedings or otherwise, shall be made on the executive director or in his or her absence, on the executive director's designee at his or her office. All suits or proceedings directly or indirectly against the system shall be brought in Cole County, except that suits or proceedings involving payment of disability benefits may be brought, at the election of the beneficiary, in the county of residence of the beneficiary.

[104.600. SERVICE CREDIT RIGHTS OF EMPLOYEE HAVING WORKED FOR BOTH TRANSPORTATION DEPARTMENT AND OTHER STATE AGENCY. — 1. A member of either the transportation department employees' and highway patrol retirement system, or the state employees' retirement system, who leaves his employment and within one month becomes a member of the other system may transfer his accumulated contributions from the one system to the other system. In such event, whether contributions have been made or not, if there are no accumulated contributions for all or any part of the prior service under the member's first employment, he shall nevertheless receive credit for all time served as a member of the prior system. Credit for prior service shall include all prior service credit which has been given by the department from which the member shall have transferred.

2. The board of trustees of each of the retirement systems shall prescribe the rules and regulations necessary to carry out the purpose of this section.**]**

104.601. YEARS OF SERVICE TO INCLUDE UNUSED ACCUMULATED SICK LEAVE, WHEN — CREDITED SICK LEAVE NOT COUNTED FOR VESTING PURPOSES — APPLICABLE ALSO TO TEACHERS' AND SCHOOL EMPLOYEES' RETIREMENT SYSTEM. — Any member retiring **[**under**]** **pursuant to** the provisions of this chapter or any member retiring **[**under**]** **pursuant to** provisions of chapter 169, RSMo, who is a member of the public school retirement system and who is employed by a state agency other than an institution of higher learning, after working continuously until reaching retirement age, shall be credited with all his **or her** unused sick leave as certified by his **or her** employing agency. When calculating years of service, each member shall be entitled to one-twelfth of a year of creditable service for each **[**twenty-one days**]** **one hundred sixty-eight hours** of unused accumulated sick leave earned by **[**him**]** **the member**. The rate of accrual of sick leave for purposes of computing years of service as this section applies to legislative, executive and judicial employees shall be consistent with the rate of accrual as specified by regulations of the personnel advisory board pursuant to section 36.350, RSMo. Nothing under this section shall allow a member to vest in the retirement system by using such credited sick leave to reach the time of vesting.

104.602. CREDITABLE SERVICE NOT PREVIOUSLY CREDITED TO MEMBERS OF EITHER SYSTEM TO BE CREDITED, WHEN — DUPLICATE CREDIT PROHIBITED — DEATH OF A MEMBER PRIOR TO EXERCISE OF TRANSFER RIGHTS, RIGHTS OF SURVIVOR. — 1. Any **[**employee**]** **member** as defined in section 104.010 **[**who, on or after August 13, 1988, has or accumulates one year of continuous service**]** may elect **prior to retirement** to receive creditable service with the system of which he or she is a current member equal to all creditable service **or any forfeited service** performed for a department covered by the other system. In no event shall a member under either system established pursuant to this chapter receive credit in more than one system for the same period of service.

2. If a member dies before retirement and prior to exercising transfer rights pursuant to the provisions of this section, the survivor may elect to receive survivor benefits that shall be computed as if the member had in fact exercised the member's transfer rights to produce the most advantageous benefit possible. In this instance, the benefit shall be paid by the system that provides the most advantageous benefit. If there is no advantage in one system or the other after the transfer of creditable service, the benefit shall be paid by the system that the member last accrued service under prior to the date of the death of the member.

104.625. ANNUITIES AND LUMP SUM PAYMENTS, WHEN, DETERMINATION OF AMOUNT. — Effective January 1, 2002, any member retiring pursuant to the provisions of sections 104.010 to 104.801, except an elected official or a member of the general assembly, who has not been paid retirement benefits and continues employment for at least two years beyond normal retirement age, may elect to receive an annuity and lump sum payment or payments, determined as follows:

(1) A retroactive starting date shall be established which shall be the later of the date when a normal annuity would have first been payable had the member retired at that time or five years before the annuity starting date, which shall be the first day of the month with respect to which an amount is paid as annuity pursuant to this section;

(2) The prospective annuity payable as of the annuity starting date shall be determined pursuant to the provisions otherwise applicable under the law, with the exception that it shall be the amount which would have been payable had the member actually retired on the retroactive starting date under the retirement plan selected by the member. Other than for the lump sum payment or payments specified in subdivision (3) of this section, no other amount shall be due for the period between the retroactive starting date and the annuity starting date;

(3) The lump sum payable shall be ninety percent of the annuity amounts which would have been paid to the member from the retroactive starting date to the annuity

starting date had the member actually retired on the retroactive starting date and received a normal annuity. The member shall elect to receive the lump sum amount either in its entirety at the same time as the initial annuity payment is made or in three equal annual installments with the first payment made at the same time as the initial annuity payment; and

(4) Any annuity payable pursuant to this section that is subject to a division of benefit order pursuant to section 104.312 shall be calculated as follows:

(a) Any service of a member between the retroactive starting date and the annuity starting date shall not be considered creditable service except for purposes of calculating the division of benefit; and

(b) The lump sum payment described in subdivision (3) of this section shall not be subject to any division of benefit order.

104.1003. DEFINITIONS. — Unless a different meaning is plainly required by the context, the following words and phrases as used in sections 104.1003 to 104.1093 shall mean:

(1) "Act", the "Year 2000 Plan" created by sections 104.1003 to 104.1093;

(2) "Actuary", an actuary who is experienced in retirement plan financing and who is either a member of the American Academy of Actuaries or an enrolled actuary under the Employee Retirement Income Security Act of 1974;

(3) "Annuity", annual benefit amounts, paid in equal monthly installments, from funds provided for in, or authorized by, sections 104.1003 to 104.1093;

(4) "Annuity starting date" means the first day of the first month with respect to which an amount is paid as an annuity pursuant to sections 104.1003 to 104.1093;

(5) "Beneficiary", any person or entity entitled to receive an annuity or other benefit pursuant to sections 104.1003 to 104.1093 based upon the employment record of another person;

(6) "Board of trustees", "board", or "trustees", a governing body or bodies established for the year 2000 plan pursuant to sections 104.1003 to 104.1093;

(7) "Closed plan", a benefit plan created pursuant to this chapter and administered by a system prior to July 1, 2000. No person first employed on or after July 1, 2000, shall become a member of the closed plan, but the closed plan shall continue to function for the benefit of persons covered by and remaining in the closed plan and their beneficiaries;

(8) "Consumer price index", the Consumer Price Index for All Urban Consumers for the United States, or its successor index, as approved by the board, as such index is defined and officially reported by the United States Department of Labor, or its successor agency;

(9) "Credited service", the total credited service to a member's credit as provided in sections 104.1003 to 104.1093;

(10) "Department", any department or agency of the executive, legislative, or judicial branch of the state of Missouri receiving state appropriations, including allocated funds from the federal government but not including any body corporate or politic unless its employees are eligible for retirement coverage from a system **[**under**]** **pursuant to** this chapter as otherwise provided by law;

(11) "Early retirement eligibility", a member's attainment of fifty-seven years of age and the completion of at least five years of credited service;

(12) "Effective date", July 1, 2000;

(13) "Employee" shall be any person who is employed by a department and is paid a salary or wage by a department in a position normally requiring the performance of duties of not less than one thousand hours per year, provided:

(a) The term "employee" shall not include any patient or inmate of any state, charitable, penal or correctional institution, or any person who is employed by a department in a position that is covered by a state-sponsored defined benefit retirement plan not created by this chapter;

(b) The term "employee" shall be modified as provided by other provisions of sections 104.1003 to 104.1093;

(c) The system shall consider a person who is employed in multiple positions simultaneously within a single agency to be working in a single position for purposes of determining whether the person is an employee as defined in this subdivision;

(d) Beginning September 1, 2001, the term "year" as used in this subdivision shall mean the twelve-month period beginning on the first day of employment;

(14) "Employer", a department;

(15) "Executive director", the executive director employed by a board established **[**under**]** **pursuant to** the provisions of sections 104.1003 to 104.1093;

(16) "Final average pay", the average pay of a member for the thirty-six full consecutive months of service before termination of employment when the member's pay was greatest; or if the member was on workers' compensation leave of absence or a medical leave of absence due to an employee illness, the amount of pay the member would have received but for such leave of absence as reported and verified by the employing department; or if the member was employed for less than thirty-six months, the average monthly pay of a member during the period for which the member was employed;

(17) "Fund", a fund of the year 2000 plan established pursuant to sections 104.1003 to 104.1093;

(18) "Investment return", "interest", rates as shall be determined and prescribed from time to time by a board;

(19) "Member", a person who is included in the membership of the system, as set forth in section 104.1009;

(20) "Normal retirement eligibility", a member's attainment of at least sixty-two years of age and the completion of at least five or more years of credited service or, the attainment of at least fifty years of age with a total of years of age and years of credited service which is at least eighty or, in the case of a member of the highway patrol who shall be subject to the mandatory retirement provisions of section 104.080, the mandatory retirement age and completion of five years of credited service or, the attainment of at least fifty years of age with a total of years of age and years of credited service which is at least eighty;

(21) "Pay" shall include:

(a) All salary and wages payable to an employee for personal services performed for a department; but excluding:

a. Any amounts paid after an employee's employment is terminated, unless the payment is made as a final installment of salary or wages at the same rate as in effect immediately prior to termination of employment in accordance with a state payroll system adopted on or after January 1, 2000;

b. Any amounts paid upon termination of employment for unused annual leave or unused sick leave; **[**and**]**

c. Pay in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986 as amended and other applicable federal laws or regulations; **and**

d. Any nonrecurring single sum payments;

(b) All salary and wages which would have been payable to an employee on workers' compensation leave of absence during the period the employee is receiving a weekly workers' compensation benefit, as reported and verified by the employing department;

(c) All salary and wages which would have been payable to an employee on a medical leave due to employee illness, as reported and verified by the employing department;

(d) For purposes of members of the general assembly, pay shall be the annual salary provided to each senator and representative pursuant to section 21.140, RSMo, plus any salary adjustment pursuant to section 21.140, RSMo;

(22) "Retiree", a person receiving an annuity from the year 2000 plan based upon the person's employment record;

(23) "State", the state of Missouri;

(24) "System" or "retirement system", the Missouri state employees' retirement system or the transportation department and highway patrol retirement system, as the case may be;

(25) "Vested former member", a person entitled to receive a deferred annuity pursuant to section 104.1036;

(26) "Year 2000 plan", the benefit plan created by sections 104.1003 to 104.1093.

104.1021. CREDITED SERVICE DETERMINED BY BOARD — CALCULATION. — 1. The appropriate board shall determine how much credited service shall be given each member consistent with this section.

2. If a member terminates employment and is eligible to receive an annuity pursuant to the year 2000 plan, or becomes a vested former member at the time of termination the member's or former member's unused sick leave as certified by the member's employing department for which the member has not been paid will be converted to credited service at the time of application for retirement benefits. The member shall receive one-twelfth of a year of credited service for each one hundred and sixty-eight hours of such unused sick leave. Such credited service shall not be used in determining the member's eligibility for retirement or final average pay. Such credited service shall be added to the credited service in the last position of employment held as a member of the system.

3. If a member is employed in a covered position and simultaneously employed in one or more other covered or noncovered positions, credited service shall be determined as if all such employment were in one position, and covered pay shall be the total of pay for all such positions.

4. In calculating any annuity, credited service means a period expressed as whole years and any fraction of a year measured in twelfths that begins on the date an employee commences employment in a covered position and ends on the date such employee's membership terminates pursuant to section 104.1018 plus any additional period for which the employee is credited with service **[**under**]** **pursuant to** this section.

5. A member shall be credited for all military service after membership commences as required by state and federal law.

6. Any member who had active military service in the United States Army, Air Force, Navy, Marine Corps, Army or Air National Guard, Coast Guard, or any reserve component thereof prior to becoming a member, or who is otherwise ineligible to receive credited service pursuant to subsection 1 or 5 of this section, and who became a member after the person's discharge from military service under honorable conditions may elect, prior to retirement, to purchase credited service for all such military service, but not to exceed four years, provided the person is not receiving and is not eligible to receive retirement credits or benefits from any other public or private retirement plan, other than a United States military service retirement system, for the military service to be purchased, and an affidavit so stating is filed by the member with the year 2000 plan along with the submission of appropriate documentation verifying the member's dates of active service. The purchase shall be effected by the member paying to the system an amount equal to the state's contributions that would have been made to the system on the member's behalf had the member been a member for the period for which the member is electing to purchase credit and had the member's pay during such period of membership been the same as the annual pay rate as of the date the member was initially employed as a member, with the calculations based on the contribution rate in effect on the date of such member's employment with simple interest calculated from the date of employment to the date of election **[**under**]** **pursuant to** this subsection. The payment shall be made over a period of not longer than two years, measured from the date of election, and with simple interest on the unpaid balance. If a member who purchased credited service pursuant to this subsection dies prior to retirement, the surviving spouse may, upon written request, receive a refund of the amount contributed for such purchase of such credited service, provided the surviving spouse is not entitled to survivorship benefits payable pursuant to the provisions of section 104.1030.

7. Any member of the Missouri state employees' retirement system shall receive credited service for the creditable prior service that such employee would have been entitled to under the closed plan pursuant to section 104.339, subsections 2, and 6 to 9 of section 104.340, subsection 12 of section 104.342, section 104.344, subsection 4 of section 104.345, subsection 4 of section 104.372, section 178.640, RSMo, and section 211.393, RSMo, provided such service has not been credited under the closed plan.

8. Any member who has service in both systems and dies or terminates employment shall have the member's service in the other system transferred to the last system that covered such member and any annuity payable to such member shall be paid by that system. Any such member may elect to transfer service between systems prior to termination of employment, provided, any annuity payable to such member shall be paid by the last system that covered such member prior to the receipt of such annuity.

9. In no event shall any person or member receive credited service pursuant to the year 2000 plan if that same service is credited for retirement benefits under any defined benefit retirement system not created pursuant to this chapter.

10. Any additional credited service as described in subsections 5 to 7 of this section shall be added to the credited service in the first position of employment held as a member of the system. Any additional creditable service received pursuant to section 105.691, RSMo, shall be added to the credited service in the position of employment held at the time the member completes the purchase or transfer pursuant to such section.

11. **[**A member may not use credited or creditable service that is purchased by the member to meet**] A member may not purchase any credited service described in this section unless the member has met** the five-year minimum service requirement as provided in subdivisions (11) and (20) of section 104.1003, the two full biennial assemblies minimum service requirement as provided in section 104.1084, or the four-year minimum service requirement as provided in section 104.1084.

104.1024. RETIREMENT, APPLICATION — ANNUITY PAYMENTS, HOW PAID, AMOUNT — ELECTION TO RECEIVE ANNUITY OR LUMP SUM PAYMENT FOR CERTAIN EMPLOYEES, DETERMINATION OF AMOUNT. — 1. Any member who terminates employment may retire on or after attaining normal retirement eligibility by making application in written form and manner approved by the appropriate board. The written application shall set forth the annuity starting date which shall **not** be **[**not less than thirty days nor more than ninety days subsequent to**] earlier than the first day of the second month following the month of the execution and filing of the member's application for retirement nor later than the first day of the fourth month following the month of** the execution and filing of the member's application for retirement.

2. A member's annuity shall be paid in the form of a life annuity, except as provided in section 104.1027, and shall be an amount for life equal to one and seven-tenths percent of the final average pay of the member multiplied by the member's years of credited service.

3. The life annuity defined in subsection 2 of this section shall not be less than a monthly amount equal to fifteen dollars multiplied by the member's full years of credited service.

4. If as of the annuity starting date of a member who has attained normal retirement eligibility the sum of the member's years of age and years of credited service equals eighty or more years and if the member's age is at least fifty years but less than sixty-two years, or, in the case of a member of the highway patrol who shall be subject to the mandatory retirement provision of section 104.080, the mandatory retirement age and completion of five years of credited service, then in addition to the life annuity described in subsection 2 of this section, the member shall receive a temporary annuity equal to eight-tenths of one percent of the member's final average pay multiplied by the member's years of credited service. The temporary annuity and any cost-of-living adjustments attributable to the temporary annuity pursuant to section 104.1045 shall terminate at the end of the calendar month in which the earlier of the following

events occurs: the member's death or the member's attainment of the earliest age of eligibility for reduced Social Security retirement benefits.

5. The annuity described in subsection 2 of this section for any person who has credited service not covered by the federal Social Security Act, as provided in sections 105.300 to 105.445, RSMo, shall be calculated as follows: the life annuity shall be an amount equal to two and five-tenths percent of the final average pay of the member multiplied by the number of years of service not covered by the federal Social Security Act in addition to one and seven-tenths percent of the final average pay of the member multiplied by the member's years of credited service covered by the federal Social Security Act.

6. Effective January 1, 2002, any member, except an elected official or a member of the general assembly, who has not been paid retirement benefits and continues employment for at least two years beyond the date of normal retirement eligibility, may elect to receive an annuity and lump sum payment or payments, determined as follows:

(1) A retroactive starting date shall be established which shall be the later of the first day of retirement eligibility or five years before the annuity starting date;

(2) The prospective annuity payable as of the annuity starting date shall be determined pursuant to the provisions of this section, with the exception that it shall be the amount which would have been payable at the annuity starting date had the member actually retired on the retroactive starting date under the retirement plan selected by the member. Other than for the lump sum payment or payments specified in subdivision (3) of this subsection, no other amount shall be due for the period between the retroactive starting date and the annuity starting date;

(3) The lump sum payable shall be ninety percent of the annuity amounts which would have been paid to the member from the retroactive starting date to the annuity starting date had the member actually retired on the retroactive starting date and received a life annuity. The member shall elect to receive the lump sum amount either in its entirety at the same time as the initial annuity payment is made or in three equal annual installments with the first payment made at the same time as the initial annuity payment; and

(4) Any annuity payable pursuant to this section that is subject to a division of benefit order pursuant to section 104.1051 shall be calculated as follows:

(a) Any service of a member between the retroactive starting date and the annuity starting date shall not be considered credited service except for purposes of calculating the division of benefit; and

(b) The lump sum payment described in subdivision (3) of this section shall not be subject to any division of benefit order.

104.1027. OPTIONS FOR ELECTION OF ANNUITY REDUCTION — SPOUSE'S BENEFITS. — 1. Prior to the last business day of the month before the annuity starting date, a member or a vested former member shall elect whether or not to have such member's or such vested former member's life annuity reduced, but not any temporary annuity which may be payable, and designate a beneficiary, as provided by the options set forth in this section; provided that if such election has not been made within such time, annuity payments due beginning on and after the month of the annuity starting date shall be made the month following the receipt by the appropriate system of such election and any other information required by the year 2000 plan created by sections 104.1003 to 104.1093, and further provided, that if such person dies after the annuity starting date but before making such election and providing such other information, no benefits shall be paid except as required **[**under**]** **pursuant to** section 104.1030:

Option 1. A retiree's life annuity shall be reduced to a certain percent of the annuity otherwise payable. Such percent shall be ninety percent adjusted as follows: if the retiree's age on the annuity starting date is younger than sixty-two years, an increase of three-tenths of one percent for each year the retiree's age is younger than age sixty-two years, to a maximum increase

of three and six-tenths percent; and if the beneficiary's age is younger than the retiree's age on the annuity starting date, a decrease of three-tenths of one percent for each year of age difference; and if the retiree's age is younger than the beneficiary's age on the annuity starting date, an increase of three-tenths of one percent for each year of age difference; provided, after all adjustments the option 1 percent cannot exceed ninety-five percent. Upon the retiree's death, fifty percent of the retiree's reduced annuity shall be paid to such beneficiary who was the retiree's spouse on the annuity starting date or as otherwise provided by subsection 5 of this section.

Option 2. A retiree's life annuity shall be reduced to a certain percent of the annuity otherwise payable. Such percent shall be eighty-three percent adjusted as follows: if the retiree's age on the annuity starting date is younger than sixty-two years, an increase of four-tenths of one percent for each year the retiree's age is younger than sixty-two years, to a maximum increase of four and eight-tenths percent; and if the beneficiary's age is younger than the retiree's age on the annuity starting date, a decrease of five-tenths of one percent for each year of age difference; and if the retiree's age is younger than the beneficiary's age on the annuity starting date, an increase of five-tenths of one percent for each year of age difference; provided, after all adjustments the option 2 percent cannot exceed ninety percent. Upon the retiree's death one hundred percent of the retiree's reduced annuity shall be paid to such beneficiary who was the retiree's spouse on the annuity starting date or as otherwise provided by subsection 5 of this section.

Option 3. A retiree's life annuity shall be reduced to ninety-five percent of the annuity otherwise payable. If the retiree dies before having received one hundred twenty monthly payments, the reduced annuity shall be continued for the remainder of the one hundred twenty-month period to the retiree's designated beneficiary provided that if there is no beneficiary surviving the retiree, the present value of the remaining annuity payments shall be paid to the retiree's estate. If the beneficiary survives the retiree but dies before receiving the remainder of such one hundred twenty monthly payments, the present value of the remaining annuity payments shall be paid to the beneficiary's estate.

Option 4. A retiree's life annuity shall be reduced to ninety percent of the annuity otherwise payable. If the retiree dies before having received one hundred eighty monthly payments, the reduced annuity shall be continued for the remainder of the one hundred eighty-month period to the retiree's designated beneficiary provided that if there is no beneficiary surviving the retiree, the present value of the remaining annuity payments shall be paid to the retiree's estate. If the beneficiary survives the retiree but dies before receiving the remainder of such one hundred eighty monthly payments, the present value of the remaining annuity payments shall be paid to the beneficiary's estate.

2. If a member is married as of the annuity starting date, the member's annuity shall be paid under the provisions of either option 1 or option 2 as set forth in subsection 1 of this section, at the member's choice, with the spouse as the member's designated beneficiary unless the spouse consents in writing to the member electing another available form of payment.

3. If a member has elected at the annuity starting date option 1 or 2 pursuant to this section and if the member's spouse or eligible former spouse dies after the annuity starting date but before the member dies, then the member may cancel the member's election and return to the life annuity form of payment and annuity amount, effective the first of the month following the date of such spouse's or eligible former spouse's death.

4. If a member designates a spouse as a beneficiary **[**under**]** **pursuant to** this section and subsequently that marriage ends as a result of a dissolution of marriage, such dissolution shall not affect the option election pursuant to this section and the former spouse shall continue to be eligible to receive survivor benefits upon the death of the member.

5. Effective July 1, 2000, a member may make an election under option 1 or 2 after the annuity starting date as described in this section if the member makes such election within one year from the date of marriage or July 1, 2000, whichever is later, pursuant to any of the following circumstances:

(1) The member elected to receive a life annuity and was not eligible to elect option 1 or 2 on the annuity starting date; or

(2) The member's annuity reverted to a normal or early retirement annuity pursuant to subsection 3 of this section, and the member remarried.

6. Effective September 1, 2001, the retirement application of any member who fails to make an election pursuant to subsection 1 of this section within ninety days of the annuity starting date contained in such retirement application shall be nullified. Any member whose retirement application is nullified shall not receive retirement benefits until the member files a new application for retirement pursuant to section 104.1024 and makes the election pursuant to subsection 1 of this section. In no event shall any retroactive retirement benefits be paid.

104.1030. DEATH PRIOR TO ANNUITY STARTING DATE, EFFECT OF — SURVIVING SPOUSE'S BENEFITS — APPLICABILITY TO MEMBERS OF GENERAL ASSEMBLY AND STATEWIDE OFFICIALS. — 1. If a member with five or more years of credited service or a vested former member dies before such member's or such vested former member's annuity starting date, the applicable annuity provided in this section shall be paid.

2. The member's surviving spouse who was married to the member at the date of death shall receive an annuity computed as if such member had:

(1) Retired on the date of death with a normal retirement annuity based upon credited service and final average pay to the date of death, and without reduction if the member's age was younger than normal retirement eligibility;

(2) Elected option 2 provided for in section 104.1027; and

(3) Designated such spouse as beneficiary under such option.

3. If a spouse annuity is not payable pursuant to the provisions of subsection 2 of this section, or when a spouse annuity has ceased to be payable, eighty percent of an annuity computed in the same manner as if the member had retired on the date of death with a normal retirement annuity based upon credited service and final average pay to the date of death and without reduction if the member's age at death was younger than normal retirement eligibility shall be divided equally among the dependent children of the deceased member. A child shall be a dependent child until death or attainment of age twenty-one, whichever occurs first; provided the age twenty-one maximum shall be extended for any child who has been found totally incapacitated by a court of competent jurisdiction. Upon a child ceasing to be a dependent child, that child's portion of the dependent annuity shall cease to be paid, and the amounts payable to any remaining dependent children shall be proportionately increased.

4. For the purpose of computing the amount of an annuity payable pursuant to this section, if the board finds that the death was the natural and proximate result of a personal injury or disease arising out of and in the course of his **or her** actual performance of duty as an employee, then the minimum annuity to such member's spouse or, if no spouse benefits are payable, the minimum annuity that shall be divided among and paid to such member's dependent children shall be fifty percent of final average pay. The credited service requirement of subsection 1 of this section shall not apply to any annuity payable pursuant to this subsection.

5. The provisions of this section shall apply to members of the general assembly and statewide elected officials except that the credited service and monthly pay requirements described in section 104.1084 shall apply notwithstanding any other language to the contrary contained in this section.

104.1039. REEMPLOYMENT OF A RETIREE, EFFECT ON ANNUITY. — If a retiree is employed as an employee by a department**[**, the retiree shall not receive an annuity payment for any calendar month in which the retiree is so employed. While reemployed the retiree shall be considered to be a new employee with no previous credited service upon subsequent retirement. Such retiree shall receive an additional annuity in addition to the original annuity, calculated

based only on the credited service and the pay earned by such retiree during reemployment and paid in accordance with the annuity option originally elected; provided such retiree who ceases to receive an annuity under this section shall not receive such additional annuity if such retiree is employed by a department in a position that is covered by a state-sponsored defined benefit retirement plan not created under this chapter. The original annuity and any additional annuity shall be paid commencing as of the end of the first month after the month during which the retiree's reemployment terminates.**] and works more than one thousand hours per year regardless of the number of positions held on or after the first day of employment, the retiree shall not receive an annuity or additional credited service for any month or part of a month for which the retiree is so employed. The system shall recover any benefit payments received by the retiree during any year that the retiree works more than one thousand hours pursuant to section 104.1060. The term "year" as used in this section shall mean the twelve-month period beginning on the annuity starting date and each subsequent year thereafter.**

104.1051. ANNUITY DEEMED MARITAL PROPERTY — DIVISION OF BENEFITS. — 1. Any annuity provided pursuant to the year 2000 plan is marital property and a court of competent jurisdiction may divide such annuity between the parties to any action for dissolution of marriage if at the time of the dissolution the member has at least five years of credited service pursuant to sections 104.1003 to 104.1093. A division of benefits order issued pursuant to this section:

(1) Shall not require the applicable retirement system to provide any form or type of annuity **or retirement plan** not selected by the member;

(2) Shall not require the applicable retirement system to commence payments until the member's annuity starting date;

(3) Shall identify **[**a percentage of**]** the monthly amount to be paid to the former spouse, which shall **be expressed as a percentage and which shall** not exceed fifty percent of the amount of the member's annuity accrued during **all or part of** the period of the marriage of the member and former spouse **and which shall be based on the member's vested annuity on the date of the dissolution of marriage or an earlier date as specified in the order,** which amount shall be adjusted proportionately upon the annuity starting date if the member's annuity is reduced due to the receipt of an early retirement annuity;

(4) Shall not require the payment of an annuity amount to the member and former spouse which in total exceeds the amount which the member would have received without regard to the order;

(5) Shall provide that any annuity increases, temporary annuity received pursuant to subsection 4 of section 104.1024, additional years of credited service, increased final average pay**, increased pay pursuant to subsections 2 and 5 of section 104.1084,** or other type of increases accrued after the date of the dissolution of marriage shall accrue solely to the benefit of the member**[**,**];** except that **on or after September 1, 2001,** any cost-of-living adjustment (COLA) due after the annuity starting date shall **[**be applied to the amounts received by both the member and the former spouse after the date of dissolution**] not be considered to be an increase accrued after the date of termination of marriage and shall be part of the monthly amount subject to division pursuant to any order issued after September 1, 2001**;

(6) Shall terminate upon the death of either the member or the former spouse, whichever occurs first;

(7) Shall not create an interest which is assignable or subject to any legal process;

(8) Shall include the name, address, date of birth, and Social Security number of both the member and the former spouse, and the identity of the retirement system to which it applies;

(9) Shall be consistent with any other division of benefits orders which are applicable to the same member.

2. A system shall provide the court having jurisdiction of a dissolution of a marriage proceeding or the parties to the proceeding with information necessary to issue a division of

benefits order concerning a member of the system, upon written request from either the court, the member, or the member's spouse, citing this section and identifying the case number and parties.

3. A system shall have the discretionary authority to reject a division of benefits order for the following reasons:

(1) The order does not clearly state the rights of the member and the former spouse;

(2) The order is inconsistent with any law governing the retirement system.

104.1072. LIFE INSURANCE BENEFITS — MEDICAL INSURANCE FOR CERTAIN RETIREES. — 1. Each board shall provide or contract, or both, for life insurance benefits for employees covered pursuant to the year 2000 plan as follows:

(1) Employees shall be provided fifteen thousand dollars of life insurance until December 31, 2000. Effective January 1, 2001, the system shall provide or contract or both for basic life insurance for employees covered under any retirement plan administered by the system pursuant to this chapter, persons covered by sections 287.812 to 287.856, RSMo, for employees who are members of the judicial retirement system as provided in section 476.590, RSMo, and, at the election of the state highways and transportation commission, employees who are members of the highways and transportation employees' and highway patrol retirement system, in the amount equal to one times annual pay, subject to a minimum amount of fifteen thousand dollars. The board shall establish by rule or contract the method for determining the annual rate of pay and any other terms of such insurance as it deems necessary to implement the requirements pursuant to this section. Annual rate of pay shall not include overtime or any other irregular payments as determined by the board. Such life insurance shall provide for triple indemnity in the event the cause of death is a proximate result of a personal injury or disease arising out of and in the course of actual performance of duty as an employee;

(2) Upon a member terminating employment and becoming a retiree the month following termination of employment, five thousand dollars of life insurance shall be provided.

2. (1) In addition to the life insurance authorized by the provisions of subsection 1 of this section, any person for whom life insurance is provided or contracted for pursuant to such subsection may purchase, at the person's own expense and only if monthly voluntary payroll deductions are authorized, additional life insurance at a cost to be stipulated in a contract with a private insurance company or as may be required by a system if the board of trustees determines that the system should provide such insurance itself. The maximum amount of additional life insurance which may be so purchased is that amount which equals six times the amount of the person's annual rate of pay, subject to any maximum established by a board, except that if such maximum amount is not evenly divisible by one thousand dollars, then the maximum amount of additional insurance which may be purchased is the next higher amount evenly divisible by one thousand dollars.

(2) Any person defined in subdivision (1) of this subsection may retain an amount not to exceed sixty thousand dollars of life insurance following the date of his or her retirement if such person becomes a retiree the month following termination of employment and makes written application for such life insurance at the same time such person's application is made to the board for retirement benefits. Such life insurance shall only be provided if such person pays the entire cost of the insurance, as determined by the board, by allowing voluntary deductions from the member's annuity.

(3) In addition to the life insurance authorized in subdivision (1) of this subsection, any person for whom life insurance is provided or contracted for pursuant to this subsection may purchase, at the person's own expense and only if monthly voluntary payroll deductions are authorized, life insurance covering the person's children or the person's spouse or both at coverage amounts to be determined by the board at a cost to be stipulated in a contract with a private insurer or as may be required by the system if the board of trustees determines that the system should provide such insurance itself.

(4) Effective July 1, 2000, any member who applies and is eligible to receive **[**a temporary**]** **an** annuity **[**pursuant to subsection 4 of section 104.1024**] based on the attainment of at least fifty years of age with a total of years of age and years of credited service which is at least eighty** shall be eligible to retain any optional life insurance described in subdivision (1) of this subsection. The amount of such retained insurance shall not be greater than the amount in effect during the month prior to termination of employment. Such insurance may be retained until the **[**temporary annuity terminates,**] member's attainment of the earliest age for eligibility for reduced Social Security retirement benefits** at which time the amount of such insurance that may be retained shall be that amount permitted pursuant to subdivision (2) of this subsection.

3. The state highways and transportation commission may provide for insurance benefits to cover medical expenses for members of the highways and transportation employees' and highway patrol retirement system. The state highways and transportation commission may provide medical benefits for dependents of members and for retired members. Contributions by the state highways and transportation commission to provide the insurance benefits shall be on the same basis as provided for other state employees pursuant to the provisions of section 104.515. Except as otherwise provided by law, the cost of benefits for dependents of members and for retired members and their dependents shall be paid by the members. The state highways and transportation commission may contract for all, or any part of, the insurance benefits provided for in this section. If the state highways and transportation commission contracts for insurance benefits, or for administration of the insurance plan, such contracts shall be entered into on the basis of competitive bids.

4. The highways and transportation employees' and highway patrol retirement system may request the state highways and transportation commission to provide life insurance benefits as required in subsections 1 and 2 of this section. If the state highways and transportation commission agrees to the request, the highways and transportation employees' and highway patrol retirement system shall reimburse the state highways and transportation commission for any and all costs for life insurance provided pursuant to subdivision (1) of subsection 1 of this section. The person who is covered pursuant to subsection 2 of this section shall be solely responsible for the costs of any additional life insurance.

104.1078. SEPARATE ACCOUNTS ESTABLISHED FOR BENEFITS — CONTRIBUTIONS BY THE STATE — BOARD TO DETERMINE PREMIUMS. — 1. Separate accounts for medical, life insurance and disability benefits provided **[**under**] pursuant to** sections 104.1072 and 104.1075 shall be established as part of the fund. The funds, property and return on investments of the separate accounts shall not be commingled with any other funds, property and investment return of a system. All benefits and premiums are paid solely from the separate accounts for medical, life insurance and disability benefits provided in this section.

2. The state shall contribute an amount as appropriated by law and approved by the governor per month **[**per employee**]** for medical benefits, life insurance, and long-term disability benefits **[**for each active employee who is a member of a system**] as provided pursuant to sections 104.1072 and 104.1075** and **such amounts shall include the cost of providing such benefits to** members not on payroll status who are receiving workers' compensation benefits.

3. Each board shall determine the premium amounts required for participating persons. The premium amounts shall be the amount which, together with the state's contribution, is required to fund the benefits provided, taking into account necessary actuarial reserves. Separate premiums shall be established for employees' benefits and a separate premium or schedule of premiums shall be established for children under twenty-three years of age and for spouses of participating employees. The employee's premiums for spouse and children benefits shall be established to cover that portion of the cost of such benefits which is not paid for by contributions by the state. All such premium amounts shall be paid to a board of trustees at the time that each employee's wages or salary would normally be paid. The premium amounts so remitted will be placed in the separate account for medical, life insurance and disability benefits. In lieu of the

availability of premium deductions, each board may establish alternative methods for the collection of premium amounts.

104.1093. DESIGNATION OF AN AGENT — REVOCATION OF AGENT'S AUTHORITY. — Notwithstanding any provision of law to the contrary, any employee, beneficiary**[,]** or retiree pursuant to sections 104.010 to 104.1093**, any administrative law judge, legal advisor or beneficiary as defined pursuant to section 287.812, RSMo, or any judge or beneficiary as defined pursuant to section 476.515, RSMo, or any special commissioner pursuant to section 476.450, RSMo,** may designate an agent who shall have the same authority as an agent pursuant to a durable power of attorney pursuant to sections 404.700 to 404.737, RSMo, with regard to the application for and receipt of an annuity or any other benefits. The authority of such agent may be revoked at any time by such employee, beneficiary or retiree. The authority of such agent shall not terminate if such employee, beneficiary or retiree becomes disabled or incapacitated. **The designation shall be effective only upon the disability or incapacity of the benefit recipient as determined by that person's physician and communicated in writing to the system.**

104.1200. DEFINITIONS. — As used in this section and section 104.1215, the following terms mean:

(1) "Education employee", any person described in the following classifications who is employed by one of the institutions, otherwise would meet the definition of "employee" pursuant to section 104.010 or 104.1003, and is not employed at a technical or vocational school or college: teaching personnel, instructors, assistant professors, associate professors, professors and academic administrators holding faculty rank;

(2) "Institutions", Truman State University, Northwest Missouri State University, Southeast Missouri State University, Southwest Missouri State University, Central Missouri State University, Harris-Stowe State College, Lincoln University, Missouri Western State College and Missouri Southern State College;

(3) "Outside employee", any other provisions of sections 104.010 to 104.1093 to the contrary notwithstanding, an education employee first so employed on or after July 1, 2002. An outside employee shall not be covered by the other benefit provisions of this chapter, but rather shall be covered by the benefit provisions provided for pursuant to sections 104.1200 to 104.1215.

104.1205. DUTIES OF BOARD. — The board of trustees of the Missouri state employees' retirement system shall:

(1) Establish a defined contribution plan for outside employees which, among other things, provides for immediate vesting;

(2) Select a third-party administrator to provide such services as the board determines to be necessary for the proper administration of the defined contribution plan;

(3) Select the investment products which shall be made available to the participants in the defined contribution plan;

(4) Annually establish the contribution rate used for purposes of subsection 3 of section 104.1066 for employees of institutions who are other than outside employees, which shall be done by considering all such employees to be part of the general employee population within the Missouri state employees' retirement system;

(5) Establish the contribution rate for outside employees which shall be equal to one percent of payroll less than the normal cost contribution rate established pursuant to subdivision (4) of this section; and

(6) Establish such rules and regulations as may be necessary to carry out the purposes of this section.

104.1210. NO CREDITABLE SERVICE FOR OUTSIDE EMPLOYEE OR MEMBER, WHEN — INFORMATION PROVIDED BY INSTITUTIONS AND ADMINISTRATORS, WHEN. — 1. In no event shall any outside employee or member of the Missouri state employees' retirement system receive creditable service or credited service in the system for any time period in which such employee or member participated in the defined contribution plan established pursuant to sections 104.1200 to 104.1215.

2. Institutions and any third-party administrator shall provide such information to the Missouri state employees' retirement system as may be required to implement the provisions of sections 104.1200 to 104.1215.

104.1215. OUTSIDE EMPLOYEE'S ELECTION FOR MEMBERSHIP, WHEN. — Any outside employee who has participated in the defined contribution plan established pursuant to sections 104.1200 to 104.1215 for at least six years may elect to become a member of the Missouri state employees' retirement system. Such employee shall:

(1) Make such election while actively employed in a position that would otherwise be eligible for membership in the Missouri state employees' retirement system except for the provisions of sections 104.1200 to 104.1215;

(2) Participate in the year 2000 plan; except that such employee shall participate in the closed plan as defined in section 104.1003 if such employee was a member of the closed plan prior to participating in such defined contribution plan;

(3) Be considered to have met the service requirements contained in subsection 4 of section 104.335 or section 104.1018, whichever is otherwise applicable;

(4) Not receive any creditable service or credited service for service rendered while a participant in such defined contribution plan;

(5) Forfeit any right to future participation in the defined contribution plan after such election; and

(6) Not be eligible to receive credited service pursuant to section 104.1090 based on service rendered while a participant in such defined contribution plan.

476.517. ONE-TIME RETIREMENT PLAN ELECTION FOR CERTAIN JUDGES. — Any judge who is or has been a commissioner or deputy commissioner of the circuit court appointed after February 29, 1972, who has received creditable service pursuant to chapter 104, RSMo, and sections 476.515 to 476.565, based on service as a commissioner or deputy commissioner shall make a one-time retirement plan election upon application to receive retirement benefits. Such judge shall elect to receive retirement benefits based on all of the judge's service as a commissioner or deputy commissioner of the circuit court pursuant to section 104.374, 104.1024 or sections 476.515 to 476.565, RSMo.

476.524. JUDGE WHO SERVED IN ARMED FORCES MAY ELECT TO PURCHASE CREDITABLE PRIOR SERVICE, LIMITATION — AMOUNT OF CONTRIBUTION — PAYMENT PERIOD — TREATMENT OF PAYMENTS. — Any judge as defined in section 476.515 who had performed active service in the United States Army, Air Force, Navy, Marine Corps, Army or Air National Guard, Coast Guard, or any reserve component thereof prior to holding office, may elect prior to retirement, to purchase all of his **or her** creditable prior service equivalent to such service in the armed forces, but not to exceed four years, if he **or she** is not receiving and is not eligible to receive retirement credits or benefits from any other public or private retirement plan for the service to be purchased, and an affidavit so stating shall be filed by the judge with the Missouri state employees' retirement system. However, if the judge is eligible to receive retirement credits in a United States military service retirement system, he or she shall be permitted to purchase creditable prior service equivalent to his or her service in the armed forces but not to exceed four years, any other provision of law to the contrary notwithstanding. The purchase shall be effected by the judge's submission of the appropriate documentation verifying

the judge's dates of active service and by paying to the Missouri state employees' retirement system an amount equal to what would have been contributed by the state **[**in his behalf had he been a member for the period for which he is electing to purchase credit and had his compensation during such period of such membership been the same as the annual salary rate at which he was initially employed by the state or when he first became a judge, whichever first occurred, with the calculations based on a contribution rate established by the actuary for the Missouri state employees' retirement system which would be equal to a contribution rate which would be used if the judicial system were founded on an actuarial basis with simple interest at the same rate in effect at the time of election calculated from the time of employment by the state to the date of election under this section**] on the judge's behalf had the judge been a judge for the period for which the judge is electing to purchase credit and had the judge's compensation during such period of membership been the same as the annual salary rate at which the judge was initially employed, with the calculations based on the assumed or actual contribution rate in effect on the date of employment with simple interest calculated from the initial date of employment of the judge to the date of election pursuant to this section**. The payment shall be made over a period of not longer than two years, measured from the date of election, with simple interest on the unpaid balance. All payments for purchase of service **[**under**] pursuant to** this section shall be set aside in a reserve fund for funding of said benefits. Payments made for such creditable prior service **[**under**] pursuant to** this section shall be treated by the Missouri state employees' retirement system as would contributions made by the state and shall not be subject to any prohibition on member contributions or refund provisions in effect at the time of enactment of this section.

SECTION 1. CERTAIN LEGAL ADVISORS TO BE MADE SPECIAL CONSULTANTS ON PROBLEMS OF RETIREMENT — LEGAL ADVISOR DEFINED. — 1. Any person who has been appointed or employed as a legal advisor pursuant to section 286.070, RSMo, prior to August 28, 2001, who is receiving or thereafter is qualified to receive retirement benefits pursuant to section 104.374, RSMo, shall upon application be made, constituted, appointed and employed by the board of trustees of the Missouri state employees' retirement system as a special consultant on the problems of retirement, aging and other state matters for the remainder of the person's life. Upon request of the board or the administrative hearing commission, the consultant shall give opinions or be available to give opinions in writing or orally in response to such requests. As compensation for such services and in lieu of receiving benefits pursuant to section 104.374, RSMo, each such special consultant shall be eligible for all benefits payable pursuant to sections 287.812 to 287.856, RSMo, effective upon the later of August 28, 1999, or the date retirement benefits become payable. In no event shall retroactive benefits be paid.

2. The term "legal advisor" as defined in subdivision (6) of section 287.812, RSMo, shall be deemed to include any attorney or legal counsel appointed or employed pursuant to section 286.070, RSMo.

SECTION 2. SPOUSE DEFINED. — For the purposes of public retirement systems administered pursuant to chapter 104, RSMo, any reference to the term "spouse" only recognizes marriage between a man and a woman.

Approved July 13, 2001

SB 374 [HS SCS SB 374]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Establishes a program of air pollution emissions banking and trading.

AN ACT to amend chapter 643, RSMo, by adding thereto one new section relating to emissions banking and trading.

SECTION
A. Enacting clause.
643.220. Missouri emissions banking and trading program established by commission — promulgation of rules.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 643, RSMo, is amended by adding thereto one new section, to be known as section 643.220, to read as follows:

643.220. MISSOURI EMISSIONS BANKING AND TRADING PROGRAM ESTABLISHED BY COMMISSION — PROMULGATION OF RULES. — 1. The commission shall promulgate rules establishing a "Missouri Air Emissions Banking and Trading Program" to achieve and maintain the National Ambient Air Quality Standards established by the United States Environmental Protection Agency pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended. In promulgating such rules, the commission may consider, but not be limited to, inclusion of provisions concerning the definition and transfer of air emissions reduction credits or allowances between mobile sources, area sources and stationary sources, the role of offsets in emissions trading, interstate and regional emissions trading and the mechanisms necessary to facilitate emissions trading and banking, including consideration of the authority of contiguous states.

2. The program shall:

(1) Not include any provisions prohibited by federal law;

(2) Be applicable to criteria pollutants and their precursors as defined by the federal Clean Air Act, as amended;

(3) Not allow banked or traded emissions credits to be used to meet federal requirements for hazardous air pollutant standards pursuant to Section 112 of the federal Clean Air Act;

(4) Allow banking and trading of criteria pollutants that are also hazardous air pollutants, as defined in Section 112 of the federal Clean Air Act, to the extent that verifiable emissions reductions achieved are in excess of those required to meet hazardous air pollutant emissions standards promulgated pursuant to Section 112 of the federal Clean Air Act;

(5) Authorize the direct trading of air emission reduction credits or allowances between nongovernmental parties, subject to the approval of the department;

(6) Allow net air emission reductions from federally-approved permit conditions to be transferred to other sources for use as offsets required by the federal Clean Air Act in nonattainment areas to allow construction of new emission sources; and

(7) Not allow banking of air emission reductions unless they are in excess of reductions required by state or federal regulations or implementation plans.

3. The department shall verify, certify or otherwise approve the amount of an air emissions reduction credit before such credit is banked. Banked credits may be used, traded, sold or otherwise expended within the same nonattainment area, maintenance area or air quality modeling domain in which the air emissions reduction occurred, provided that there will be no resulting adverse impact of air quality.

4. To be creditable for deposit in the Missouri air emissions bank, a reduction in air emissions shall be permanent, quantifiable and federally approved.

5. To be tradeable between air emission sources, air emission reduction credits shall be based on air emission reductions that occur after the effective date of this section.

6. In nonattainment areas, the bank of criteria pollutants and their precursors shall be reduced by three percent annually for as long as the area is classified as a nonattainment area.

Approved July 12, 2001

SB 382 [HCS SCS SB 382]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Prohibits release of nonpublic information by financial institutions.

AN ACT relating to compliance with Title V of the federal Gramm-Leach- Bliley Financial Modernization Act of 1999, with an emergency clause.

SECTION
1. Disclosure of nonpublic personal information by financial institutions prohibited, rules, notice.
A. Enacting clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION BY FINANCIAL INSTITUTIONS PROHIBITED, RULES, NOTICE. — 1. No person shall disclose any nonpublic personal information to a nonaffiliated third party contrary to the provisions of Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999 (15 U.S.C. 6801 to 6809). A state agency with the primary regulatory authority over an activity engaged in by a financial institution which is subject to Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999 may adopt rules and regulations to carry out this section with respect to such activity. Such rules and regulations adopted pursuant to this section shall be consistent with and not be more restrictive than standards contained in Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999.

2. Unless prohibited by federal law or regulation, any financial institution required to provide a disclosure of the institution's privacy policy pursuant to Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999 shall provide an initial notice regarding such privacy policy:

(1) At the time the customer relationship is established for consumers who become new customers of the financial institution on or after July 1, 2001; and

(2) Before June 30, 2002, for consumers who are existing customers of the financial institution.

A financial institution shall not disclose any nonpublic personal information to a nonaffiliated third party contrary to the provisions of Title V of the Gramm-Leach-Bliley Financial Modernization Act of 1999 before the financial institution has made the disclosure required in this section.

SECTION A. ENACTING CLAUSE. — Because of the need to protect consumer confidentiality, the enactment of section 1 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the enactment of section 1 of this act shall be in full force and effect upon its passage and approval or July 1, 2001, whichever later occurs.

Approved May 23, 2001

SB 383 [SCS SB 383]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes the Governor to sell certain property in Platte County.

AN ACT to authorize the conveyance of property owned by the state in Platte County to Kansas City International Airport.

SECTION
1. Conveyance of property by governor to the Kansas City International Airport — commissioner of administration to set terms of sale — attorney general to approve form of conveyance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. CONVEYANCE OF PROPERTY BY GOVERNOR TO THE KANSAS CITY INTERNATIONAL AIRPORT — COMMISSIONER OF ADMINISTRATION TO SET TERMS OF SALE — ATTORNEY GENERAL TO APPROVE FORM OF CONVEYANCE. — 1. The governor is hereby authorized and empowered to sell, transfer, grant and convey all interest in fee simple absolute in property owned by the state in Platte County known as the KCI Multi-Purpose Export Facility to the Kansas City International Airport. The KCI Multi-Purpose Export Facility, is more particularly described as follows:

All that part of Tracts 143 and 144, KANSAS CITY INTERNATIONAL AIRPORT, a subdivision in Kansas City, Platte County, Missouri, described as follows:

Beginning at a point on the Southerly line of said Tract 144 that is South 76 degrees 55 minutes 19 seconds East, a distance of 643.24 feet from the Southwest corner thereof; thence North 17 degrees 09 minutes 31 seconds West, a distance of 69.68 feet; thence North 72 degrees 50 minute 29 seconds East, a distance of 200.00 feet; thence South 17 degrees 09 minutes 31 seconds East a distance of 300 feet; thence South 72 degrees 50 minutes 29 seconds West, a distance of 200 feet; thence North 17 degrees 09 minutes 31 seconds West, a distance of 230.32 feet to the point of beginning.

2. The commissioner of administration shall set the terms and conditions for the sale as the commissioner deems reasonable. Such termsand conditions may include, but are not limited to, the number of appraisals required, the time, place and terms of the sale.

3. The attorney general shall approve as to form the instrument of conveyance.

Approved June 26, 2001

SB 384 [SCS SB 384]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Adds additional criteria for the denial or revocation of dietitians' licenses.

AN ACT to repeal sections 324.212 and 324.217, RSMo 2000, relating to licensure of dietitians, and to enact in lieu thereof two new sections relating to the same subject.

SECTION
A. Enacting clause.
324.212. Applications for licensure, fees — renewal notices — dietitian fund established.

324.217. Refusal to issue or renew license, when — complaint filed against licensee, when — hearing procedures — maintenance of complaints filed — recommendation for prosecution.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 324.212 and 324.217, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 324.212 and 324.217, to read as follows:

324.212. APPLICATIONS FOR LICENSURE, FEES — RENEWAL NOTICES — DIETITIAN FUND ESTABLISHED. — 1. Applications for licensure as a dietitian shall be in writing, submitted to the committee on forms prescribed by the division and furnished to the applicant. The application shall contain the applicant's statements showing the applicant's education, experience and such other information as the committee may require. Each application shall contain a statement that it is made under oath or affirmation and that the information contained therein is true and correct to the best knowledge and belief of the applicant, subject to the penalties provided for the making of a false affidavit or declaration. Each application shall be accompanied by the fees required by the committee.

2. The division shall mail a renewal notice to the last known address of each licensee prior to the licensure renewal date. Failure to provide the committee with the information required for **[**licensure**] renewal**, or to pay the **[**licensure**] renewal** fee after such notice shall effect a noncurrent license. The license shall be **[**restored**] reinstated** if, within two years of the **[**licensure**] renewal** date, the applicant submits the required documentation and pays the applicable fees as approved by the committee.

3. A new **[**certificate**] license** to replace any **[**certificate**] license** lost, destroyed or mutilated may be issued subject to the rules of the committee upon payment of a fee.

4. The committee shall set by rule the appropriate amount of fees authorized herein. The fees shall be set at a level to produce revenue which shall not exceed the cost and expense of administering the provisions of sections 324.200 to 324.225. All fees provided for in sections 324.200 to 324.225 shall be collected by the director who shall transmit the funds to the director of revenue to be deposited in the state treasury to the credit of the "Dietitian Fund" which is hereby created.

5. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds three times the amount of the appropriation from the dietitian fund for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the dietitian fund for the preceding fiscal year.

324.217. REFUSAL TO ISSUE OR RENEW LICENSE, WHEN — COMPLAINT FILED AGAINST LICENSEE, WHEN — HEARING PROCEDURES — MAINTENANCE OF COMPLAINTS FILED — RECOMMENDATION FOR PROSECUTION. — 1. The committee may refuse to issue any license or renew any license required by the provisions of sections 324.200 to 324.225 for one or any combination of reasons stated in subsection 2 of this section. The committee shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the right to file a complaint with the administrative hearing commission as provided in chapter 621, RSMo.

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided in chapter 621, RSMo, against the holder of any license required by sections 324.200 to 324.225 or any person who has failed to renew or has surrendered the person's license for any one or any combination of the following causes:

(1) Use of fraud, deception, misrepresentation or bribery in securing a license issued pursuant to the provisions of sections 324.200 to 324.225 or in obtaining permission to take the examination required pursuant to sections 324.200 to 324.225;

(2) Impersonation of any person holding a license or allowing any person to use his or her license or diploma from any school;

(3) **[**Revocation or suspension of a license**] Disciplinary action against the holder of a license** or other right to practice medical nutrition therapy by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(4) **[**Obtaining**] Issuance of** a license based upon a material mistake of fact; **[**or**]**

(5) **[**Failure to display a valid license if so required by sections 324.200 to 324.225 or any rule promulgated pursuant thereto**] The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or the United States for any offense reasonably related to the qualifications, functions or duties of the professional who is regulated by sections 324.200 to 324.225, for any offense an essential element of which is fraud, dishonesty or act of violence, or for any offense involving moral turpitude, regardless of whether sentence is imposed;**

(6) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of the profession that is regulated by sections 324.200 to 324.225;

(7) Violation of, or assisting or enabling any person to violate, any provision of sections 324.200 to 324.225, or any lawful rule adopted pursuant to such sections;

(8) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(9) Use of any advertisement or solicitation that is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(10) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(11) Use or unlawful possession of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession that is licensed or regulated by sections 324.200 to 324.225;

(12) Violation of the drug laws or rules and regulations of this state, any other state or the federal government; or

(13) Violation of any professional trust or confidence.

3. Any person, organization, association or corporation who reports or provides information to the committee pursuant to the provisions of sections 324.200 to 324.225 and who does so in good faith shall not be subject to an action for civil damages as a result thereof.

4. After the filing of a complaint pursuant to subsection 2 of this section, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the committee may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the committee deems appropriate for a period not to exceed **[**three**] five** years, or **may suspend, for a period not to exceed three years, or** revoke the license of the person. **An individual whose license has been revoked shall wait one year from the date of revocation to apply for relicensure. Relicensure shall be at the discretion of the committee after compliance with all requirements of sections 324.200 to 324.225 relative to the licensing of an applicant for the first time.**

5. The committee shall maintain an information file containing each complaint filed with the committee relating to a holder of a license. **[**The committee, at least quarterly, shall notify the complainant and holder of a license of the complaint's status until final disposition.**]**

6. The committee shall recommend for prosecution violations of sections 324.200 to 324.225 to an appropriate prosecuting or circuit attorney.

Approved July 10, 2001

SB 393 [CCS HS SCS SB 393]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Expands provisions allowing gratuitous dental services.

AN ACT to repeal sections 167.181, 191.211, 191.411, 191.600, 191.603, 191.605, 191.607, 191.609, 191.611, 191.614, 191.615, 192.070, 332.072, 332.181, 332.261, 332.311, and 332.321, RSMo 2000, relating to dental care, and to enact in lieu thereof twenty-two new sections relating to the same subject, with an emergency clause for certain sections.

SECTION

A. Enacting clause.
167.181. Immunization of pupils against certain diseases compulsory — exceptions — records — to be at public expense, when — fluoride treatments administered, when — rulemaking authority, procedure.
191.211. Funding of certain programs.
191.213. Additional funding sources for certain programs.
191.411. System of coordinated health care services — health access incentive fund created, purpose — enhanced Medicaid payments — rules.
191.600. Loan repayment program established — health professional student loan repayment program fund established — use.
191.603. Definitions.
191.605. Department to designate as areas of need — factors to be considered.
191.607. Qualifications for eligibility established by department.
191.609. Contract for repayment of loans, contents.
191.611. Loan repayment program to cover certain loans — amount paid per year of obligated service — schedule of payments — communities sharing costs to be given first consideration.
191.614. Termination of medical studies or failure to become licensed doctor, liability — breach of contract for service obligation, penalties — recovery of amount paid by contributing community.
191.615. Application for federal funds — insufficient funds, effect.
192.070. Care of babies and hygiene of children, educational literature to be issued by department.
332.072. Gratuitous dental services, dentists and dental hygienists licensed in other states may perform, when — prohibited, when — dental hygiene services, supervision required, when.
332.086. Advisory commission for dental hygienists established, duties, members, terms, meetings, expenses.
332.181. License to practice dentistry, application, renewal — continuing education requirement, exception — failure to renew license, requirements to renew — inactive list, procedure — out-of-state licensee, who is eligible.
332.261. License as dental hygienist, application, renewal — continuing education requirement, exception — renewal and reinstatement procedure — out-of-state licensee, eligibility.
332.311. Dental hygienist to practice under dentist supervision only — no supervision required for fluoride treatments, teeth cleaning and sealants.
332.321. Refusal to issue or renew, revocation or suspension of license, grounds for, procedure — additional disciplinary actions.
332.324. Donated dental services program established — contract with Missouri dental board, contents.
660.026. Funding for federally qualified health centers, uses — report to the director.
1. Dental primary care and preventative health services.
B. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 167.181, 191.211, 191.411, 191.600, 191.603, 191.605, 191.607, 191.609, 191.611, 191.614, 191.615, 192.070, 332.072, 332.181, 332.261, 332.311 and 332.321, RSMo 2000, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 167.181, 191.211, 191.213, 191.411, 191.600, 191.603, 191.605, 191.607, 191.609, 191.611, 191.614, 191.615, 192.070, 332.072, 332.086, 332.181, 332.261, 332.311, 332.321, 332.324, 660.026 and 1, to read as follows:

167.181. IMMUNIZATION OF PUPILS AGAINST CERTAIN DISEASES COMPULSORY — EXCEPTIONS — RECORDS — TO BE AT PUBLIC EXPENSE, WHEN — FLUORIDE TREATMENTS

ADMINISTERED, WHEN — RULEMAKING AUTHORITY, PROCEDURE. — 1. The department of health, after consultation with the department of elementary and secondary education, shall promulgate rules and regulations governing the immunization against poliomyelitis, rubella, rubeola, mumps, tetanus, pertussis, diphtheria, and hepatitis B, to be required of children attending public, private, parochial or parish schools. Such rules and regulations may modify the immunizations that are required of children in this subsection. The immunizations required and the manner and frequency of their administration shall conform to recognized standards of medical practice. The department of health shall supervise and secure the enforcement of the required immunization program.

2. It is unlawful for any student to attend school unless he has been immunized as required under the rules and regulations of the department of health, and can provide satisfactory evidence of such immunization; except that if he produces satisfactory evidence of having begun the process of immunization, he may continue to attend school as long as the immunization process is being accomplished in the prescribed manner. It is unlawful for any parent or guardian to refuse or neglect to have his child immunized as required by this section, unless the child is properly exempted.

3. This section shall not apply to any child if one parent or guardian objects in writing to his school administrator against the immunization of the child, because of religious beliefs or medical contraindications. In cases where any such objection is for reasons of medical contra-indications, a statement from a duly licensed physician must also be provided to the school administrator.

4. Each school superintendent, whether of a public, private, parochial or parish school, shall cause to be prepared a record showing the immunization status of every child enrolled in or attending a school under his jurisdiction. The name of any parent or guardian who neglects or refuses to permit a nonexempted child to be immunized against diseases as required by the rules and regulations promulgated pursuant to the provisions of this section shall be reported by the school superintendent to the department of health.

5. The immunization required may be done by any duly licensed physician or by someone under his direction. If the parent or guardian is unable to pay, the child shall be immunized at public expense by a physician or nurse at or from the county, district, city public health center or a school nurse or by a nurse or physician in the private office or clinic of the child's personal physician with the costs of immunization paid through the state Medicaid program, private insurance or in a manner to be determined by the department of health subject to state and federal appropriations, and after consultation with the school superintendent and the advisory committee established in section 192.630, RSMo. **When a child receives his or her immunization, the treating physician may also administer the appropriate fluoride treatment to the child's teeth.**

6. Funds for the administration of this section and for the purchase of vaccines for children of families unable to afford them shall be appropriated to the department of health from general revenue or from federal funds if available.

7. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of **[**section 536.024**] chapter 536**, RSMo.

191.211. FUNDING OF CERTAIN PROGRAMS. — State expenditures for new programs and initiatives enacted by sections **[**191.411, RSMo, and sections**]** 103.178, RSMo, 143.999, RSMo, **[**167.600 to 167.621, RSMo,**]** 188.230, RSMo, **[**191.211,**]** 191.231, 191.825 to 191.839, RSMo, **[**192.013, RSMo,**]** 208.177, 208.178, 208.179 and 208.181, RSMo, 211.490, RSMo, 285.240, RSMo, 337.093, RSMo, 374.126, RSMo, 376.891 to 376.894, RSMo, 431.064, RSMo, 660.016, 660.017 and 660.018, RSMo, and the state expenditures for the new initiatives and expansion of programs enacted by revising sections 105.711 and 105.721, RSMo, 191.520, 191.600, 198.090, RSMo, 208.151, 208.152 and 208.215, RSMo, as provided by H.B. 564,

1993, shall be funded exclusively by federal funds and the funding sources established in sections 149.011, 149.015, 149.035, 149.061, 149.065, 149.160, 149.170, 149.180, 149.190 and 149.192, RSMo, and no future general revenue shall be appropriated to fund such new programs or expansions.

191.213. ADDITIONAL FUNDING SOURCES FOR CERTAIN PROGRAMS. — State expenditures for programs and initiatives enacted by section 191.411 and sections 167.600 to 167.621, RSMo, may be funded by federal funds, general revenue funds and any other funds appropriated to fund such programs.

191.411. SYSTEM OF COORDINATED HEALTH CARE SERVICES — HEALTH ACCESS INCENTIVE FUND CREATED, PURPOSE — ENHANCED MEDICAID PAYMENTS — RULES. — 1. The director of the department of health shall develop and implement a plan to define a system of coordinated health care services available and accessible to all persons, in accordance with the provisions of this section. The plan shall encourage the location of appropriate practitioners of health care services**, including dentists,** in **rural and urban** areas of the state**, particularly those areas** designated by the director of the department of health as health resource shortage areas, in return for the consideration enumerated in subsection 2 of this section. The department of health shall have authority to contract with public and private health care providers for delivery of such services.

2. There is hereby created in the state treasury the "Health Access Incentive Fund". Moneys in the fund shall be used to implement and encourage a program to fund **loans,** loan repayments, start-up grants, provide locum tenens, professional liability insurance assistance, practice subsidy, annuities when appropriate, or technical assistance in exchange for location of appropriate health providers**, including dentists,** who agree to serve all persons in need of health services regardless of ability to pay. The department of health shall encourage the recruitment of minorities in implementing this program.

3. In accordance with an agreement approved by both the director of the department of social services and the director of the department of health, the commissioner of the office of administration shall issue warrants to the state treasurer to transfer available funds from the health access incentive fund to the department of social services to be used to enhance medicaid payments to physicians or dentists in order to enhance the availability of physician or dental services in shortage areas. The amount that may be transferred shall be the amount agreed upon by the directors of the departments of social services and health and shall not exceed the maximum amount specifically authorized for any such transfer by appropriation of the general assembly.

4. The general assembly shall appropriate money to the health access incentive fund from the health initiatives fund created by section 191.831. The health access incentive fund shall also contain money as otherwise provided by law, gift, bequest or devise. Notwithstanding the provisions of section 33.080, RSMo, the unexpended balance in the fund at the end of the biennium shall not be transferred to the general revenue fund of the state.

5. The director of the department of health shall have authority to promulgate reasonable rules to implement the provisions of this section pursuant to chapter 536, RSMo**[**, and section 192.013, RSMo**]**.

191.600. LOAN REPAYMENT PROGRAM ESTABLISHED — HEALTH PROFESSIONAL STUDENT LOAN REPAYMENT PROGRAM FUND ESTABLISHED — USE. — 1. Sections 191.600 to 191.615 establish a loan repayment program for graduates of approved medical schools, schools of osteopathic medicine**, schools of dentistry** and accredited chiropractic colleges who practice in areas of defined need and shall be known as the "**[**Medical School**]** **Health Professional Student** Loan Repayment Program".

2. The "**[**Medical School**]** **Health Professional Student** Loan and Loan Repayment Program Fund" is hereby created in the state treasury. All funds recovered from an individual pursuant to section 191.614 and all funds generated by loan repayments and penalties received pursuant to section 191.540 shall be credited to the fund. The moneys in the fund shall be used by the department of health to provide loan repayments pursuant to section 191.611 in accordance with sections 191.600 to 191.614 and to provide loans pursuant to sections 191.500 to 191.550.

191.603. DEFINITIONS. — As used in sections 191.600 to 191.615, the following terms shall mean:

(1) "Areas of defined need", areas designated by the department pursuant to section 191.605, when services of a physician **or dentist** are needed to improve the patient-doctor ratio in the area, to contribute **health care** professional **[**physician**]** services to an area of economic impact, or to contribute **health care** professional **[**physician**]** services to an area suffering from the effects of a natural disaster;

(2) "Department", the department of health;

(3) **"General dentist", dentists licensed and registered pursuant to chapter 332, RSMo, engaged in general dentistry and who are providing such services to the general population;**

(4) "Primary care physician", physicians licensed and registered pursuant to chapter 334, RSMo, engaged in general or family practice, internal medicine, pediatrics or obstetrics and gynecology as their primary specialties, and who are providing such primary care services to the general population.

191.605. DEPARTMENT TO DESIGNATE AS AREAS OF NEED — FACTORS TO BE CONSIDERED. — The department shall designate counties, communities, or sections of urban areas as areas of defined need when such county, community or section of an urban area has**[**, but is not limited to, the following:

(1) A population to primary care physician ratio of three thousand five hundred to one or more; or

(2) A population to primary care physician ratio of less than three thousand five hundred to one, but greater than two thousand five hundred to one; and

(a) Has a twenty percent or greater population fifty-five years of age or over; or

(b) Twenty percent of the population or households are below the poverty level; or

(c) If the largest hospital in the area is approximately thirty miles or more from a comparable or larger facility or if the central community in the area is approximately fifteen miles or more from a hospital having more than four thousand discharges a year or more than four hundred deliveries annually; and

(d) Has a community or city of six thousand or more population plus the surrounding area up to a radius of approximately fifteen miles that serves as the central community or an urban or metropolitan neighborhood located within the central city or cities of a standard metropolitan statistical area having limited interaction with contiguous areas and a minimum population of approximately twenty thousand;

(3) Any other community or section of an urban area with unusual circumstances can be evaluated on a case-by-case basis for designation by the department as an area of defined need**] been designated as a primary care health professional shortage area or a dental health care professional shortage area by the federal Department of Health and Human Services, or has been determined by the director of the department of health to have an extraordinary need for health care professional services, without a corresponding supply of such professionals**.

191.607. QUALIFICATIONS FOR ELIGIBILITY ESTABLISHED BY DEPARTMENT. — The department shall adopt and promulgate regulations establishing standards for determining eligible persons for loan repayment **[**under**]** **pursuant to** sections 191.600 to 191.615. These standards shall include, but are not limited to the following:

(1) Citizenship or permanent residency in the United States;

(2) Residence in the state of Missouri;

(3) Enrollment as a full-time medical student in the final year of a course of study offered by an approved educational institution or licensed to practice medicine or osteopathy pursuant to chapter 334, RSMo;

(4) **Enrollment as a full-time dental student in the final year of course study offered by an approved educational institution or licensed to practice general dentistry pursuant to chapter 332, RSMo;**

(5) Application for loan repayment.

191.609. CONTRACT FOR REPAYMENT OF LOANS, CONTENTS. — 1. The department shall enter into a contract with each individual qualifying for repayment of educational loans. The written contract between the department and an individual shall contain, but not be limited to, the following:

(1) An agreement that the state agrees to pay on behalf of the individual loans in accordance with section 191.611 and the individual agrees to serve for a time period equal to two years, or such longer period as the individual may agree to, in an area of defined need, such service period to begin within one year of the signed contract;

(2) A provision that any financial obligations arising out of a contract entered into and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments;

(3) The area of defined need where the person will practice;

(4) A statement of the damages to which the state is entitled for the individual's breach of the contract;

(5) Such other statements of the rights and liabilities of the department and of the individual not inconsistent with sections 191.600 to 191.615.

2. The department may stipulate specific practice sites contingent upon department generated **[**physician**]** **health care professional** need priorities where applicants shall agree to practice for the duration of their participation in the program.

191.611. LOAN REPAYMENT PROGRAM TO COVER CERTAIN LOANS — AMOUNT PAID PER YEAR OF OBLIGATED SERVICE — SCHEDULE OF PAYMENTS — COMMUNITIES SHARING COSTS TO BE GIVEN FIRST CONSIDERATION. — 1. A loan payment provided for an individual under a written contract under the **[**medical school**]** **health professional student** loan payment program shall consist of payment on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual for tuition, fees, books, laboratory, and living expenses incurred by the individual.

2. For each year of obligated services that an individual contracts to serve in an area of defined need, the director may pay **[**up to twenty thousand dollars**]** **an amount not to exceed the maximum amounts allowed under the National Health Service Corps Loan Repayment Program, 42 U.S.C. Section 2541-1, P.L. 106-213,** on behalf of the individual for loans described in subsection 1 of this section.

3. The department may enter into an agreement with the holder of the loans for which repayments are made **[**under**]** **pursuant to** the **[**medical school**]** **health professional student** loan payment program to establish a schedule for the making of such payments if the establishment of such a schedule would result in reducing the costs to the state.

4. Any qualifying communities providing a portion of a loan repayment shall be considered first for placement.

191.614. TERMINATION OF MEDICAL STUDIES OR FAILURE TO BECOME LICENSED DOCTOR, LIABILITY — BREACH OF CONTRACT FOR SERVICE OBLIGATION, PENALTIES — RECOVERY OF AMOUNT PAID BY CONTRIBUTING COMMUNITY. — 1. An individual who has entered into a written contract with the department; and in the case of an individual who is enrolled in the final year of a course of study and fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study or fails to become licensed pursuant to chapter **332 or** 334, RSMo, within one year shall be liable to the state for the amount which has been paid on his **or her** behalf under the contract.

2. If an individual breaches the written contract of the individual by failing either to begin such individual's service obligation or to complete such service obligation, the state shall be entitled to recover from the individual an amount equal to the sum of:

(1) The total of the amounts prepaid by the state on behalf of the individual;

(2) The interest on the amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum prevailing rate as determined by the Treasurer of the United States;

(3) An amount equal to **[**the unserved obligation penalty, the amount equal to the product number of months of obligated service which were not completed by an individual, multiplied by five hundred dollars**] any damages incurred by the department as a result of the breach;**

(4) Any legal fees or associated costs incurred by the department or the state of Missouri in the collection of damages.

3. The department may act on behalf of a qualified community to recover from an individual described in subsections 1 and 2 of this section the portion of a loan repayment paid by such community for such individual.

191.615. APPLICATION FOR FEDERAL FUNDS — INSUFFICIENT FUNDS, EFFECT. — 1. The department shall submit a grant application to the Secretary of the United States Department of Health and Human Services as prescribed by the secretary to obtain federal funds to finance the **[**medical school**] health professional student** loan repayment program.

2. Sections 191.600 to 191.615 shall not be construed to require the department to enter into contracts with individuals who qualify for the **[**medical school**] health professional student** loan repayment program when federal and state funds are not available for such purpose.

192.070. CARE OF BABIES AND HYGIENE OF CHILDREN, EDUCATIONAL LITERATURE TO BE ISSUED BY DEPARTMENT. — The **[**bureau of child hygiene in the**]** department of health shall issue educational literature on the care of the baby and the hygiene of the child **including, but not limited to, the importance of routine dental care for children**; study the causes of infant mortality and the application of measures for the prevention and suppression of the diseases of infancy and childhood; and inspect the sanitary and hygienic conditions in public school buildings and grounds.

332.072. GRATUITOUS DENTAL SERVICES, DENTISTS AND DENTAL HYGIENISTS LICENSED IN OTHER STATES MAY PERFORM, WHEN — PROHIBITED, WHEN — DENTAL HYGIENE SERVICES, SUPERVISION REQUIRED, WHEN. — Notwithstanding any other provision of law to the contrary, any qualified dentist who is legally authorized to practice pursuant to the laws of another state may practice as a dentist in this state without examination by the board or payment of any fee and any qualified dental hygienist who is a graduate of an accredited dental hygiene school and legally authorized to practice pursuant to the laws of another state may practice as a dental hygienist in this state without examination by the board or payment of any fee, if such dental or dental hygiene practice consists solely of the provision of gratuitous dental or dental hygiene services provided for **[**a summer camp for**]** a period of not more than fourteen

days in any one calendar year. Dentists and dental hygienists who are currently licensed in other states and have been refused licensure by the state of Missouri or previously been licensed by the state, but are no longer licensed due to suspension or revocation shall not be allowed to provide gratuitous dental services within the state of Missouri. Any dental hygiene services provided pursuant to this section shall be performed under the supervision of a dentist providing dental services pursuant to this section or a dentist licensed to practice dentistry in Missouri.

332.086. ADVISORY COMMISSION FOR DENTAL HYGIENISTS ESTABLISHED, DUTIES, MEMBERS, TERMS, MEETINGS, EXPENSES. — 1. There is hereby established a five-member "Advisory Commission for Dental Hygienists", composed of dental hygienists appointed by the governor as provided in subsection 2 of this section and the dental hygienist member of the Missouri dental board, which shall guide, advise and make recommendations to the Missouri dental board. The commission shall:

(1) Recommend the educational requirements to be registered as a dental hygienist;

(2) Annually review the practice act of dental hygiene;

(3) Make recommendations to the Missouri dental board regarding the practice, licensure, examination and discipline of dental hygienists; and

(4) Assist the board in any other way necessary to carry out the provisions of this chapter as they relate to dental hygienists.

2. The members of the commission shall be appointed by the governor with the advice and consent of the senate. Each member of the commission shall be a citizen of the United States and a resident of Missouri for one year and shall be a dental hygienist registered and currently licensed pursuant to this chapter. Members of the commission who are not also members of the Missouri dental board shall be appointed for terms of five years, except for the members first appointed, one of which shall be appointed for a term of two years, one shall be appointed for a term of three years, one shall be appointed for a term of four years and one shall be appointed for a term of five years. The dental hygienist member of the Missouri dental board shall become a member of the commission and shall serve a term concurrent with the member's term on the dental board. All members of the initial commission shall be appointed by April 1, 2002. Members shall be chosen from lists submitted by the director of the division of professional registration. Lists of dental hygienists submitted to the governor may include names submitted to the director of the division of professional registration by the president of the Missouri Dental Hygienists Association.

3. The commission shall hold an annual meeting at which it shall elect from its membership a chairperson and a secretary. The commission shall meet in conjunction with the dental board meetings or no more than fourteen days prior to regularly scheduled dental board meetings. Additional meetings shall require a majority vote of the commission. A quorum of the commission shall consist of a majority of its members.

4. Members of the commission shall serve without compensation but shall be reimbursed for all actual and necessary expenses incurred in the performance of their official duties on the commission and in attending meetings of the Missouri dental board. The Missouri dental board shall provide all necessary staff and support services as required by the commission to hold commission meetings, to maintain records of official acts, and to conduct all other business of the commission.

332.181. LICENSE TO PRACTICE DENTISTRY, APPLICATION, RENEWAL — CONTINUING EDUCATION REQUIREMENT, EXCEPTION — FAILURE TO RENEW LICENSE, REQUIREMENTS TO RENEW — INACTIVE LIST, PROCEDURE — OUT-OF-STATE LICENSEE, WHO IS ELIGIBLE. — 1. **[**After a person has received a certificate of registration qualifying him to practice dentistry in Missouri, he may within one year from the date of his certificate, apply, on forms furnished to the applicant for, and upon payment of a dentist's license fee shall receive, a license to

practice dentistry in Missouri.**]** **No person shall engage in the practice of dentistry in Missouri without having first secured a license as provided for in this chapter.**

2. **[**The certificate of registration of a dentist issued to any person who fails to apply for a license as herein provided within one year after the date of his certificate of registration shall be void.**]** **Any person desiring a license to practice dentistry in Missouri shall make application to the board on a form prescribed by the board pursuant to section 332.141. An application for licensure shall be active for one year after the date it is received by the board. The application becomes void if not completed within such one-year period.**

3. **[**Each person who holds a certificate of registration**]** **All persons once licensed** to practice dentistry in Missouri shall renew his **or her** license to practice dentistry in Missouri on or before the license renewal date and shall display his **or her** license for each current licensing period in the office in which he **or she** practices or offers to practice dentistry.

4. **Effective with the licensing period beginning on December 1, 2002, a license shall be renewed every two years.** The board shall not renew **[**any certificate of registration**]** **the license** of any dentist unless the licensee **[**shall provide**]** **provides** satisfactory evidence that he **or she** has completed **[**seventy-five**]** **fifty** hours of continuing education within a **[**three-year**]** **two-year** period. **The board may extend the time requirements for completion of continuing education up to six months for reasons related to health, military service, foreign residency or for other good cause. All requests for extensions of time shall be made in writing and submitted to the board before the renewal date.** The board may waive the requirements for continuing education for retired or disabled dentists or for other good cause.

5. Any **[**registered and**]** licensed dentist who fails to renew his **or her** license on or before the renewal date may apply to the board for **[**a**]** renewal of his **or her** license within **[**five**]** **four** years subsequent to the date **[**his license expired**]** **of the license expiration**, provided that any such applicant shall pay a reinstatement fee for the license.

6. The **[**certificate of registration**]** **license** of any dentist who fails to renew **[**his license**]** within **[**five**]** **four** years of the time his **or her** license has expired shall be void. **[**He**]** **The dentist** may reapply for a **[**new certificate of registration**]** **license**, provided that, unless **[**he applies under**]** **application is made pursuant to** section 332.211, he **or she** shall pay the same fees and be examined in the same manner as an original applicant for **[**a certificate of registration**]** **licensure** as a dentist. A **[**registered and**]** currently licensed dentist in Missouri may apply to the board to be placed on an inactive list of dentists, and during the time his **or her** name remains on the inactive list, he **or she** shall not practice dentistry. If a dentist wishes to be removed from the inactive list, unless he **or she** applies **[**under**]** **pursuant to** section 332.211, he **or she** shall apply for a current license and pay the license fees for the years between the date of the entry of his **or her** name on the inactive list and the date of issuance of his current license. **[**And, if he**]** **If the dentist** has been on the inactive list for more than **[**three**]** **four** years, **he or she shall** be examined in the same manner as an original applicant for **[**a certificate of registration**]** **licensure** as a dentist.

7. A **[**registered and**]** currently licensed dentist in Missouri who does not maintain a practice in this state or does not reside in this state may apply to the board to be placed on an out-of-state licensee list of dentists. Any dentist applying to be so **[**registered and**]** licensed shall accompany his **or her** application with a fee not greater than the licensure fee for a licensee who maintains a practice in this state or who resides in this state. The required fee shall be established by the board, by rule, as with other licensing fees.

332.261. LICENSE AS DENTAL HYGIENIST, APPLICATION, RENEWAL — CONTINUING EDUCATION REQUIREMENT, EXCEPTION — RENEWAL AND REINSTATEMENT PROCEDURE — OUT-OF-STATE LICENSEE, ELIGIBILITY. — 1. **[**After a person has received a certificate of registration qualifying him to practice as a dental hygienist in Missouri, he may within one year from the date of his certificate apply for and shall receive a license to practice as a dental

hygienist in Missouri. Application forms shall be furnished to the applicant, and the application shall be accompanied by the dental hygienist license fee.**] No person shall engage in the practice of dental hygiene without having first secured a license as provided for in this chapter.**

2. **[**The certificate of registration as a dental hygienist issued to any person who fails to apply for a license as herein provided within one year after the date of his certificate of registration shall be void.**] Any person desiring a license to practice dental hygiene in Missouri shall make application to the board on a form prescribed by the board pursuant to section 332.241. An application for licensure shall be active for one year after the date it is received by the board. The application becomes void if not completed within such one-year period.**

3. **[**Each person who holds a certificate of registration**] All persons once licensed** to practice as a dental hygienist in Missouri shall renew his **or her** license to practice **[**as a dental hygienist**]** on or before the renewal date and shall display his **or her** license for each current licensing period in the office in which he **or she** practices or offers to practice as a dental hygienist.

4. **Effective with the licensing period beginning on December 1, 2002, a license shall be renewed every two years.** The board shall not renew **[**any certificate of registration**] the license** of any hygienist unless the licensee **[**shall provide**] provides** satisfactory evidence that he **or she** has completed **[**forty-five**] thirty** hours of continuing education within a **[**three-year**] two-year** period. **The board may extend the time requirements for completion of the continuing education up to six months for reasons related to health, military service, foreign residency or for other good cause. All requests for extensions of time shall be made in writing and submitted to the board before the renewal date.** The board may waive the requirements for continuing education for retired or disabled hygienists or for other good cause.

5. Any **[**registered and**]** licensed dental hygienist who fails to renew his **or her** license on or before the renewal date may apply to the board for **[**a**]** renewal of his **or her** license within **[**five years after the date his license expired, but he**] four years subsequent to the date of the license expiration, provided that any such applicant** shall pay a reinstatement fee for the **[**new**]** license.

6. The **[**certificate of registration**] license** of any dental hygienist who fails to renew **[**his license within five**] within four** years of the time that his **or her** license **[**shall have**]** expired shall be void. **[**He**] The dental hygienist** may apply for a new **[**certificate of registration**] license**, provided that, unless **[**he applies under**] application is made pursuant to** section 332.281, he **or she** shall pay the same fees and be examined in the same manner as an original applicant for **[**a certificate of registration**] licensure** as a dental hygienist. **A currently licensed dental hygienist in Missouri may apply to the board to be placed on an inactive list of dental hygienists, and during the time his or her name remains on the inactive list, he or she shall not practice as a dental hygienist. If a dental hygienist wishes to be removed from the inactive list, unless he or she applies pursuant to section 332.281, he or she shall apply for a current license and pay the license fees for the years between the date of the entry of his or her name on the inactive list and the date of issuance of his or her current license. If the dental hygienist has been on the inactive list for more than four years, he or she shall be examined in the same manner as an original applicant for licensure as a dental hygienist.**

7. **[**Any dental hygienist holding a certificate of registration in this state**] A currently licensed dental hygienist in Missouri** who does not practice in this state or who does not reside in this state may apply to the board to be placed on an out-of-state registration list of dental hygienists. Any dental hygienist applying to be so **[**registered**] licensed** shall accompany his **or her** application with a fee not greater than the license fee for a licensee who practices in this state or resides in this state. The required fee shall be established by the board, by rule, as with other licensing fees.

332.311. DENTAL HYGIENIST TO PRACTICE UNDER DENTIST SUPERVISION ONLY — NO SUPERVISION REQUIRED FOR FLUORIDE TREATMENTS, TEETH CLEANING AND SEALANTS. — **1. Except as provided in subsection 2 of this section,** a duly registered and currently licensed dental hygienist may only practice as a dental hygienist so long as the dental hygienist is employed by a dentist who is duly registered and currently licensed in Missouri, or as an employee of such other person or entity approved by the board in accordance with rules promulgated by the board. In accordance with this chapter and the rules promulgated by the board pursuant thereto, a dental hygienist shall only practice under the supervision of a dentist who is duly registered and currently licensed in Missouri**, except as provided in subsection 2 of this section**.

2. A duly registered and currently licensed dental hygienist who has been in practice at least three years and who is practicing in a public health setting may provide fluoride treatments, teeth cleaning and sealants, if appropriate, to children who are eligible for medical assistance, pursuant to chapter 208, RSMo, without the supervision of a dentist. Medicaid shall reimburse any eligible provider who provides fluoride treatments, teeth cleaning, and sealants to eligible children. Those public health settings in which a dental hygienist may practice without the supervision of a dentist shall be established jointly by the department of health and by the Missouri dental board by rule. This provision shall expire on August 28, 2006.

332.321. REFUSAL TO ISSUE OR RENEW, REVOCATION OR SUSPENSION OF LICENSE, GROUNDS FOR, PROCEDURE — ADDITIONAL DISCIPLINARY ACTIONS. — 1. The board may refuse to issue **[**any certificate of registration or authority, permit or license, or refuse to renew any such certificate of registration or authority, permit or license,**]** **or renew a permit or license** required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section or the board may, as a condition to issuing or renewing any such **[**certificate of registration or authority,**]** permit or license, require a person to submit himself or herself for identification, intervention, treatment or rehabilitation by the well-being committee as provided in section 332.327. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any **[**certificate of registration or authority,**]** permit or license required by this chapter or any person who has failed to renew or has surrendered his or her **[**certificate of registration or authority,**]** permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any **[**certificate of registration or authority,**]** permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation; or increasing charges when a patient utilizes a third-party payment program; or for repeated irregularities in billing a third party for services rendered to a patient. For the purposes of this subdivision, irregularities in billing shall include:

(a) Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered;

(b) Reporting incorrect treatment dates for the purpose of obtaining payment;

(c) Reporting charges for services not rendered;

(d) Incorrectly reporting services rendered for the purpose of obtaining payment **[**which**]** **that** is greater than that to which the person is entitled;

(e) Abrogating the co-payment or deductible provisions of a third-party payment contract. Provided, however, that this paragraph shall not prohibit a discount, credit or reduction of charges provided under an agreement between the **[**holder of a license**]** **licensee** and an insurance company, health service corporation or health maintenance organization licensed pursuant to the laws of this state; or governmental third-party payment program; or self-insurance program organized, managed or funded by a business entity for its own employees or labor organization for its members;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a **[**certificate of registration or authority,**]** permit or license or allowing any person to use his or her **[**certificate of registration or authority,**]** permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter **[**granted**]** **imposed** by another state, **province,** territory, federal agency or country upon grounds for which **[**revocation or suspension**]** **discipline** is authorized in this state;

(9) A person is finally adjudicated incapacitated or disabled by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice, by lack of supervision or in any other manner, any profession licensed or regulated by this chapter who is not registered and currently eligible to practice pursuant to this chapter;

(11) Issuance of a **[**certificate of registration or authority,**]** permit or license based upon a material mistake of fact;

(12) Failure to display a valid certificate**,** **permit** or license if so required by this chapter or by any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation **[**which**]** **that** is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed. False, misleading or deceptive advertisements or solicitations shall include, but not be limited to:

(a) Promises of cure, relief from pain or other physical or mental condition, or improved physical or mental health;

(b) Any misleading or deceptive statement offering or promising a free service. Nothing herein shall be construed to make it unlawful to offer a service for no charge if the offer is announced as part of a full disclosure of routine fees including consultation fees;

(c) Any misleading or deceptive claims of patient cure, relief or improved condition; superiority in service, treatment or materials; new or improved service, treatment or material; or reduced costs or greater savings. Nothing herein shall be construed to make it unlawful to use any such claim if it is readily verifiable by existing documentation, data or other substantial evidence. Any claim **[**which**]** **that** exceeds or exaggerates the scope of its supporting documentation, data or evidence is misleading or deceptive;

(d) Any announced fee for a specified service where that fee does not include the charges for necessary related or incidental services, or where the actual fee charged for that specified service may exceed the announced fee, but it shall not be unlawful to announce only the

maximum fee **[**which**]** **that** can be charged for the specified service, including all related or incidental services, modified by the term "up to" if desired;

(e) Any announcement in any form including the term "specialist" or the phrase "limited to the specialty of" unless each person named in conjunction with the term or phrase, or responsible for the announcement, holds a valid Missouri certificate and license evidencing that the person is a specialist in that area;

(f) Any announcement containing any of the terms denoting recognized specialties, or other descriptive terms carrying the same meaning, unless the announcement clearly designates by list each dentist not licensed as a specialist in Missouri who is sponsoring or named in the announcement, or employed by the entity sponsoring the announcement, after the following clearly legible or audible statement: "Notice: the following dentist(s) in this practice is (are) not licensed in Missouri as specialists in the advertised dental specialty(s) of .....";

(g) Any announcement containing any terms denoting or implying specialty areas **[**which**]** **that** are not recognized by the American Dental Association;

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(16) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof;

(17) Failing to maintain his or her office or offices, laboratory, equipment and instruments in a safe and sanitary condition;

(18) Accepting **[**or**],** tendering or paying "rebates" to or "splitting fees" with any other person; provided, however, that nothing herein shall be so construed as to make it unlawful for a dentist practicing in a partnership or as a corporation organized pursuant to the provisions of chapter 356, RSMo, **[**from distributing**]** **to distribute** profits in accordance with his or her stated agreement;

(19) Administering, **or** causing or permitting to be administered, nitrous oxide gas in any amount to himself or herself**[**;**],** or to another unless **[**this administration is done**]** as an adjunctive measure to patient management;

(20) Being unable to practice as a dentist, specialist or hygienist with reasonable skill and safety to patients by reasons of professional incompetency, or because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any mental or physical condition. In enforcing this subdivision the board shall, after a hearing before the board, upon a finding of probable cause, require the dentist or specialist or hygienist to submit to a reexamination for the purpose of establishing his or her competency to practice as a dentist, specialist or hygienist, which reexamination shall be conducted in accordance with rules adopted for this purpose by the board, including rules to allow the examination of the dentist's, specialist's or hygienist's professional competence by at least three dentists or fellow specialists, or to submit to a mental or physical examination or combination thereof by at least three physicians. One examiner shall be selected by the dentist, specialist or hygienist compelled to take examination, one selected by the board, and one shall be selected by the two examiners so selected. Notice of the physical or mental examination shall be given by personal service or registered mail. Failure of the dentist, specialist or hygienist to submit to the examination when directed shall constitute an admission of the allegations against him or her, unless the failure was due to circumstances beyond his or her control. A dentist, specialist or hygienist whose right to practice has been affected pursuant to this subdivision shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume competent practice with reasonable skill and safety to patients.

(a) In any proceeding pursuant to this subdivision, neither the record of proceedings nor the orders entered by the board shall be used against a dentist, specialist or hygienist in any other proceeding. Proceedings pursuant to this subdivision shall be conducted by the board without the filing of a complaint with the administrative hearing commission;

(b) When the board finds any person unqualified because of any of the grounds set forth in this subdivision, it may enter an order imposing one or more of the following: denying his

or her application for a license; permanently withholding issuance of a license; administering a public or private reprimand; **placing on probation,** suspending or limiting or restricting his or her license to practice as a dentist, specialist or hygienist for a period of not more than five years; revoking his or her license to practice as a dentist, specialist or hygienist; requiring him or her to submit to the care, counseling or treatment of physicians designated by the dentist, specialist or hygienist compelled to be treated; or requiring such person to submit to identification, intervention, treatment or rehabilitation by the well-being committee as provided in section 332.327. For the purpose of this subdivision, "license" includes the certificate of registration, or license, or both, issued by the board.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2, for disciplinary action are met, the board may, singly or in combination:

(1) Censure or place the person or firm named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years; or

(2) **[**May**]** Suspend the license, certificate or permit for a period not to exceed three years; or

(3) Revoke the license, certificate, or permit**. In any order of revocation, the board may provide that the person shall not apply for licensure for a period of not less than one year following the date of the order of revocation**; or

(4) Cause the person or firm named in the complaint to make restitution to any patient, or any insurer or third-party payer who shall have paid in whole or in part a claim or payment **for** which they should be reimbursed **[**for**],** where restitution would be an appropriate remedy, including the reasonable cost of follow-up care to correct or complete a procedure performed or one **[**which**] that** was to be performed by the person or firm named in the complaint; or

(5) Request the attorney general to bring an action in the circuit court of competent jurisdiction to recover a civil penalty on behalf of the state in an amount to be assessed by the court.

4. Notwithstanding any other provisions of section 332.071 or of this section, a **[**duly registered and**]** currently licensed dentist in Missouri may enter into an agreement with individuals and organizations to provide dental health care, provided such agreement does not permit or compel practices **[**in violation of this section or violate any other**] that violate any** provision of this chapter.

5. At all proceedings for the enforcement of these or any other provisions of this chapter the board shall, as it deems necessary, select, in its discretion, either the attorney general or one of the attorney general's assistants designated by the attorney general or other legal counsel to appear and represent the board at each stage of such proceeding or trial until its conclusion.

6. If at any time when any **[**disciplinary sanctions have**] discipline has** been imposed pursuant to this section or pursuant to any provision of this chapter, the licensee removes himself or herself from the state of Missouri, ceases to be currently licensed pursuant to the provisions of this chapter, or fails to keep the Missouri dental board advised of his or her current place of business and residence, the time of his or her absence, or unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed.

332.324. DONATED DENTAL SERVICES PROGRAM ESTABLISHED — CONTRACT WITH MISSOURI DENTAL BOARD, CONTENTS. — 1. The department of health may contract to establish a donated dental services program, in conjunction with the provisions of section 332.323, through which volunteer dentists, licensed by the state pursuant to this chapter, will provide comprehensive dental care for needy, disabled, elderly and medically-compromised individuals. Eligible individuals may be treated by the volunteer dentists in their private offices. Eligible individuals may not be required to pay any fees or costs, except for dental laboratory costs.

2. The department of health shall contract with the Missouri dental board, its designee or other qualified organizations experienced in providing similar services or programs, to administer the program.

3. The contract shall specify the responsibilities of the administering organization which may include:

(1) The establishment of a network of volunteer dentists including dental specialists, volunteer dental laboratories and other appropriate volunteer professionals to donate dental services to eligible individuals;

(2) The establishment of a system to refer eligible individuals to appropriate volunteers;

(3) The development and implementation of a public awareness campaign to educate eligible individuals about the availability of the program;

(4) Providing appropriate administrative and technical support to the program;

(5) Submitting an annual report to the department that:

(a) Accounts for all program funds;

(b) Reports the number of individuals served by the program and the number of dentists and dental laboratories participating as providers in the program; and

(c) Reports any other information required by the department;

(6) Performing, as required by the department, any other duty relating to the program.

4. The department shall promulgate rules, pursuant to chapter 536, RSMo, for the implementation of this program and for the determination of eligible individuals. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

660.026. FUNDING FOR FEDERALLY QUALIFIED HEALTH CENTERS, USES — REPORT TO THE DIRECTOR. — Subject to appropriation, the director of the department of social services, or the director's designee, may contract with and provide funding support to federally qualified health centers, as defined in 42 U.S.C. Section 1396d(1)(2)(B), in this state. Funds appropriated pursuant to this section shall be used to assist such centers in ensuring that health care, including dental care, and mental health services is available to needy persons in this state. Such funds may also be used by centers for capital expansion, infrastructure redesign or other similar uses if federal funding is not available for such purposes. No later than forty-five days following the end of each federal fiscal year, the centers shall report to the director of the department of social services the number of patients served by age, race, gender, method of payment and insurance status.

SECTION 1. DENTAL PRIMARY CARE AND PREVENTATIVE HEALTH SERVICES. — Dental primary care and preventive health services as authorized in 105.711, RSMo, shall include examinations, cleaning, fluoride treatment, application of sealants, placement of basic restorations and emergency treatment to relieve pain.

SECTION B. EMERGENCY CLAUSE. — Because of the importance of children receiving adequate access to dental care, the repeal and reenactment of sections 167.181, 192.070, 332.072, 332.311 and 332.321, and the enactment of section 332.324 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is

hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of sections 167.181, 192.070, 332.072, 332.311 and 332.321 and the enactment of section 332.324 of this act shall be in full force and effect upon its passage and approval.

Approved July 10, 2001

SB 394 [SB 394]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes conveyance of land between the board of governors of Southwest Missouri State University and the Southwest Missouri Ecumenical Center.

AN ACT to authorize the conveyance of certain property between the board of governors of Southwest Missouri State University and the Southwest Missouri Ecumenical Center.

SECTION

1. Conveyance of property by Southwest Missouri State University to Southwest Missouri Ecumenical Center — attorney general to approve form of conveyance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. CONVEYANCE OF PROPERTY BY SOUTHWEST MISSOURI STATE UNIVERSITY TO SOUTHWEST MISSOURI ECUMENICAL CENTER — ATTORNEY GENERAL TO APPROVE FORM OF CONVEYANCE. — 1. The board of governors of Southwest Missouri State University is hereby authorized to convey by warranty deed or other appropriate instrument, as the board determines appropriate, its right, title and interest in the following described real estate identified as Tract I to Southwest Missouri Ecumenical Center, in consideration of a similar conveyance to the board of governors of Southwest Missouri State University of a similarly-sized tract of land owned by Southwest Missouri Ecumenical Center, identified as Tract II, both tracts located west of National Avenue and north of Monroe Street, in Springfield, Greene County, Missouri:

Tract I:

Comprised of Lots 42, 41, and the South 20.18 feet of Lot 40 of Biggs and Gray's Subdivision and being more particularly described as follows:

Beginning at the Southwest corner of Lot 42 said; thence along the East right-of-way of Florence, North 01 50'37" East, 125.42 feet; thence parallel with the South line of Lot 42, South 88 45'25" East, 145.04 feet, to the West line of a 15 foot alley; thence South 01 47'39" West, 125.42 feet, to the Southeast corner of Lot 42; thence along the South line of Lot 42, North 88 46'43" West, 145.15 feet, to the point of beginning. Containing 0.418 acres more or less.

Tract II:

Comprised of Lots 50 and 51 of Biggs and Gray's Subdivision and being more particularly described as follows: Beginning at the Southeast corner of Lot 51 said point lying on the West right-of-way of National Avenue; thence North 88 45'52" West, 175.25 feet, to the Southwest corner of Lot 51; thence North 01 47'39" East, 103.89 feet, to the Northwest corner of Lot 50; thence South 88 44'58" East, 175.13 feet, to the Northeast corner of Lot 50; thence South 01 43'35" West, 103.84 feet, to the point of beginning. Containing 0.418 acres more or less.

2. The attorney general shall approve as to form the instrument of conveyance.

Approved July 10, 2001

SB 406 [SB 406]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows Director of Revenue to enter into agreements with foreign countries regarding reciprocal driver's licenses.

AN ACT to repeal section 302.173, RSMo 2000, relating to drivers' examination for licensure, and to enact in lieu thereof two new sections relating to the same subject.

SECTION
A. Enacting clause.
302.172. Exchange of drivers' licenses, foreign countries, reciprocal agreements, content.
302.173. Driver's examination required, when — exceptions — procedure.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 302.173, RSMo 2000, is repealed and two new sections enacted in lieu thereof, to be known as sections 302.172 and 302.173, to read as follows:

302.172. EXCHANGE OF DRIVERS' LICENSES, FOREIGN COUNTRIES, RECIPROCAL AGREEMENTS, CONTENT. — 1. The director of revenue is hereby authorized to negotiate and enter into reciprocal agreements or arrangements with foreign countries in order to facilitate the exchange of drivers' licenses.

2. Such agreements or arrangements shall authorize the department of revenue to allow individuals who possess drivers' licenses from foreign countries to obtain a Missouri drivers' license without requiring such persons to complete the examination as provided in section 302.173 other than a vision test and a test of the applicant's ability to understand highway signs regulating, warning or directing traffic.

302.173. DRIVER'S EXAMINATION REQUIRED, WHEN — EXCEPTIONS — PROCEDURE. — 1. Any applicant for a license, who does not possess a valid license issued pursuant to the laws of this state**, another state, or a country which has a reciprocal agreement with the state of Missouri regarding the exchange of licenses pursuant to section 302.172** shall be examined as herein provided. Any person who has failed to renew such person's license on or before the date of its expiration or within six months thereafter must take the complete examination. Any active member of the armed forces, their adult dependents or any active member of the peace corps may apply for a renewal license without examination of any kind, unless otherwise required by sections 302.700 to 302.780, provided the renewal application shows that the previous license had not been suspended or revoked. Any person honorably discharged from the armed forces of the United States who held a valid license prior to being inducted may apply for a renewal license within sixty days after such person's honorable discharge without submitting to any examination of such person's ability to safely operate a motor vehicle over the highways of this state unless otherwise required by sections 302.700 to 302.780, other than the vision test provided in section 302.175, unless the facts set out in the

renewal application or record of convictions on the expiring license, or the records of the director show that there is good cause to authorize the director to require the applicant to submit to the complete examination. No applicant for a renewal license shall be required to submit to any examination of his or her ability to safely operate a motor vehicle over the highways of this state unless otherwise required by sections 302.700 to 302.780 or regulations promulgated thereunder, other than a test of the applicant's ability to understand highway signs regulating, warning or directing traffic and the vision test provided in section 302.175, unless the facts set out in the renewal application or record of convictions on the expiring license, or the records of the director show that there is good cause to authorize the director to require the applicant to submit to the complete examination. The examination shall be made available in each county. Reasonable notice of the time and place of the examination shall be given the applicant by the person or officer designated to conduct it. The complete examination shall include a test of the applicant's natural or corrected vision as prescribed in section 302.175, the applicant's ability to understand highway signs regulating, warning or directing traffic, the applicant's practical knowledge of the traffic laws of this state, and an actual demonstration of ability to exercise due care in the operation of a motor vehicle of the classification for which the license is sought. When an applicant for a license has a **[**valid**]** license from a state which has requirements for issuance of a license comparable to the Missouri requirements **or a license from a country which has a reciprocal agreement with the state of Missouri regarding the exchange of licenses pursuant to section 302.172 and such license has not expired more than six months prior to the date of application for the Missouri license**, the director may waive the **test of the applicant's practical knowledge of the traffic laws of this state, and the** requirement of actual demonstration of ability to exercise due care in the operation of a motor vehicle. If the director has reasonable grounds to believe that an applicant is suffering from some known physical or mental ailment which ordinarily would interfere with the applicant's fitness to operate a motor vehicle safely upon the highways, the director may require that the examination include a physical or mental examination by a licensed physician of the applicant's choice, at the applicant's expense, to determine the fact. The director shall prescribe regulations to ensure uniformity in the examinations and in the grading thereof and shall prescribe and furnish all forms to the members of the highway patrol and to other persons authorized to conduct examinations as may be necessary to enable the officer or person to properly conduct the examination. The records of the examination shall be forwarded to the director who shall not issue any license hereunder if in the director's opinion the applicant is not qualified to operate a motor vehicle safely upon the highways of this state.

2. The director of revenue shall delegate the power to conduct the examinations required for a license or permit to any member of the highway patrol or any person employed by the highway patrol. The powers delegated to any examiner may be revoked at any time by the director of revenue upon notice.

3. Notwithstanding the requirements of subsections 1 and 2 of this section, the successful completion of a motorcycle rider training course approved pursuant to sections 302.133 to 302.138 shall constitute an actual demonstration of the person's ability to exercise due care in the operation of a motorcycle or motortricycle, and no further driving test shall be required to obtain a motorcycle or motortricycle license or endorsement.

Approved July 10, 2001

SB 407 [SCS SB 407]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes several new special license plates and amends law concerning several existing special license plates.

AN ACT to amend chapter 301, RSMo, by adding thereto four new sections, relating to motor vehicle license plates.

SECTION
A. Enacting clause.
301.3035. Missouri Botanical Garden special license plate, application, fees.
301.3039. St. Louis Zoo special license plate, application, fees.
301.3057. Kansas City Zoo special license plate, application, fees.
301.3059. Springfield Zoo special license plate, application, fees.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 301, RSMo, is amended by adding thereto four new sections, to be known as sections 301.3035, 301.3039, 301.3057 and 301.3059, to read as follows:

301.3035. MISSOURI BOTANICAL GARDEN SPECIAL LICENSE PLATE, APPLICATION, FEES. — 1. Any member of the Missouri Botanical Garden, after an annual payment of an emblem-use authorization fee to the Missouri Botanical Garden, may receive special license plates for any vehicle the member owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. The Missouri Botanical Garden hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to the Missouri Botanical Garden derived from this section, except reasonable administrative costs, shall be used solely for the purposes of the Missouri Botanical Garden. Any member of the Missouri Botanical Garden may annually apply for the use of the emblem.

2. Upon annual application and payment of a thirty-five dollar emblem-use contribution to the Missouri Botanical Garden, the Missouri Botanical Garden shall issue to the vehicle owner, without further charge, an "emblem-use authorization statement", which shall be presented by the vehicle owner to the director of revenue at the time of registration. Upon presentation of the annual statement and payment of a fifteen dollar fee in addition to the regular registration fees, and presentation of any documents which may be required by law, the director of revenue shall issue to the vehicle owner a special license plate which shall bear the emblem of the Missouri Botanical Garden. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates pursuant to this section.

3. A vehicle owner who was previously issued a plate with the Missouri Botanical Garden's emblem authorized by this section, but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Missouri Botanical Garden's emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms required by this section.

301.3039. ST. LOUIS ZOO SPECIAL LICENSE PLATE, APPLICATION, FEES. — 1. Any member of the Saint Louis Zoo, after an annual payment of an emblem-use authorization fee to the Saint Louis Zoo, may receive special license plates for any vehicle the member owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. The Saint

Louis Zoo hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to the Saint Louis Zoo derived from this section, except reasonable administrative costs, shall be used solely for the purposes of the Saint Louis Zoo. Any member of the Saint Louis Zoo may annually apply for the use of the emblem.

2. Upon annual application and payment of a thirty-five dollar emblem-use contribution to the Saint Louis Zoo, the Saint Louis Zoo shall issue to the vehicle owner, without further charge, an "emblem-use authorization statement", which shall be presented by the vehicle owner to the director of revenue at the time of registration. Upon presentation of the annual statement and payment of a fifteen dollar fee in addition to the regular registration fees, and presentation of any documents which may be required by law, the director of revenue shall issue to the vehicle owner a special license plate which shall bear the emblem of the Saint Louis Zoo. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates issued pursuant to this section.

3. A vehicle owner who was previously issued a plate with the Saint Louis Zoo's emblem authorized by this section, but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Saint Louis Zoo's emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms required by this section.

301.3057. KANSAS CITY ZOO SPECIAL LICENSE PLATE, APPLICATION, FEES. — 1. Any member of the Kansas City Zoo, after an annual payment of an emblem-use authorization fee to the Kansas City Zoo, may receive special license plates for any vehicle the member owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. The Kansas City Zoo hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to the Kansas City Zoo derived from this section, except reasonable administrative costs, shall be used solely for the purposes of the Kansas City Zoo. Any member of the Kansas City Zoo may annually apply for the use of the emblem.

2. Upon annual application and payment of a thirty-five dollar emblem-use contribution to the Kansas City Zoo, the Kansas City Zoo shall issue to the vehicle owner, without further charge, an "emblem-use authorization statement", which shall be presented by the vehicle owner to the director of revenue at the time of registration. Upon presentation of the annual statement and payment of a fifteen dollar fee in addition to the regular registration fees and presentation of documents which may be required by law, the director of revenue shall issue to the vehicle owner a special license plate which shall bear the emblem of the Kansas City Zoo. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates issued pursuant to this section.

3. A vehicle owner who was previously issued a plate with the Kansas City Zoo's emblem authorized by this section, but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Kansas City Zoo's emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms required by this section.

301.3059. SPRINGFIELD ZOO SPECIAL LICENSE PLATE, APPLICATION, FEES. — 1. Any member of the Springfield Zoo, after an annual payment of an emblem-use authorization fee to the Springfield Zoo, may receive special license plates for any vehicle the person owns, either solely or jointly, other than an apportioned motor vehicle or a commercial motor vehicle licensed in excess of eighteen thousand pounds gross weight. The Springfield Zoo hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to the Springfield Zoo derived from this section, except reasonable administrative costs, shall be used solely for the purposes of the Springfield Zoo. Any member of the Springfield Zoo may annually apply for the use of the emblem.

2. Upon annual application and payment of a thirty-five dollar emblem-use contribution to the Springfield Zoo, the Springfield Zoo shall issue to the vehicle owner, without further charge, an "emblem-use authorization statement", which shall be presented by the vehicle owner to the director of revenue at the time of registration. Upon presentation of the annual statement and payment of a fifteen dollar fee in addition to the regular registration fees and presentation of documents which may be required by law, the director of revenue shall issue to the vehicle owner a special license plate which shall bear the emblem of the Springfield Zoo. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130. Notwithstanding the provisions of section 301.144, no additional fee shall be charged for the personalization of license plates issued pursuant to this section.

3. A vehicle owner who was previously issued a plate with the Springfield Zoo's emblem authorized by this section, but who does not provide an emblem-use authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Springfield Zoo's emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the enforcement of this section, and shall design all necessary forms required by this section.

Approved July 10, 2001

SB 430 [SB 430]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows the City of St. Louis to establish a band fund.

AN ACT to repeal section 71.640, RSMo 2000, relating to taxation for band funds in certain municipalities, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
71.640. Tax for band fund authorized.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 71.640, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 71.640, to read as follows:

71.640. TAX FOR BAND FUND AUTHORIZED. — Any city not within a county, any city, village or town having a population of less than twenty-five thousand and any city having a

population of more than thirty-five thousand located in any county of the first class contiguous to a county of the first class having a charter form of government and not containing any part of a city of over four hundred thousand, howsoever organized, and irrespective of its form of government, may, by one of the two methods authorized in section 71.650, levy a tax for use in providing free band concerts, or equivalent musical service by the band upon occasions of public importance.

Approved June 29, 2001

SB 431 [SCS SB 431]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes the Governor to convey the rights to certain water held in Mark Twain Lake.

AN ACT to authorize the conveyance of certain state property to the Clarence Cannon Wholesale Water Commission, with an emergency clause.

SECTION

1. Transfer of rights in water and water storage of Mark Twain Lake to Clarence Cannon Wholesale Water Commission.
2. Transfer agreement, amount of water and water storage.
3. Additional transfer of rights of water and water storage.
4. Consideration for transfer of rights.
5. Missouri water development fund created.
6. Attorney general to approve instrument of conveyance.
A. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. TRANSFER OF RIGHTS IN WATER AND WATER STORAGE OF MARK TWAIN LAKE TO CLARENCE CANNON WHOLESALE WATER COMMISSION. — Notwithstanding any other laws to the contrary, the governor is hereby authorized and empowered to bargain, transfer, and convey to the Clarence Cannon Wholesale Water Commission rights in the water and water storage of Mark Twain Lake acquired by the state of Missouri by contract with the United States of America dated March 10, 1988.

SECTION 2. TRANSFER AGREEMENT, AMOUNT OF WATER AND WATER STORAGE. — An agreement to transfer rights to water and water storage shall immediately convey and transfer one million nine hundred thousand gallons per day of water and its equivalent acre feet of water storage to the Clarence Cannon Wholesale Water Commission in accordance with the contract dated March 10, 1988, by and between the United States of America, Clarence Cannon Wholesale Water Commission, and the state of Missouri.

SECTION 3. ADDITIONAL TRANSFER OF RIGHTS TO WATER AND WATER STORAGE. — The authorization set forth in this section includes the power to convey and transfer rights to water and water storage in an additional amount of up to five million gallons per day and its equivalent acre feet of storage, that portion of the rights to Mark Twain Lake having been conveyed to the state of Missouri by the United States of America by contract dated March 10, 1988.

SECTION 4. CONSIDERATION FOR TRANSFER OF RIGHTS. — Consideration for the transfer of water rights and the rights to water storage in Mark Twain Lake shall

require the Clarence Cannon Wholesale Water Commission to assume the transferred portion of all financial obligations of the state of Missouri to the United States of America as indicated in contract dated March 10, 1988, including all payments for principal and interest due and owed from the date of transfer to Clarence Cannon Wholesale Water Commission forward and into the future until such obligations to the United States are fully paid for that water and water storage acquired by the state of Missouri in Mark Twain Lake.

SECTION 5. MISSOURI WATER DEVELOPMENT FUND CREATED. — If the state receives moneys from Clarence Cannon Wholesale Water Commission pursuant to an agreement under this act, such moneys may be deposited in the "Missouri Water Development Fund", created by section 256.290, RSMo.

SECTION 6. ATTORNEY GENERAL TO APPROVE INSTRUMENT OF CONVEYANCE. — The attorney general shall approve as to form the instrument of conveyance.

SECTION A. EMERGENCY CLAUSE. — Because of the need to provide water for residential, commercial, and industrial users in northeast Missouri, sections 1 to 6 of this act are deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and are hereby declared to be an emergency act within the meaning of the constitution, and sections 1 to 6 of this act shall be in full force and effect upon their passage and approval.

Approved May 16, 2001

SB 435 [SB 435]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Exempts historic vehicles from emissions testing.

AN ACT to repeal section 643.315, RSMo 2000, relating to emission requirements for historic vehicles, and to enact in lieu thereof one new section relating to the same subject.

SECTION

A. Enacting clause.

643.315. Motor vehicles subject to program, when, exceptions — reciprocity with other states — dealer inspection, return of motor vehicle for failing inspection, options, violation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 643.315, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 643.315, to read as follows:

643.315. MOTOR VEHICLES SUBJECT TO PROGRAM, WHEN, EXCEPTIONS — RECIPROCITY WITH OTHER STATES — DEALER INSPECTION, RETURN OF MOTOR VEHICLE FOR FAILING INSPECTION, OPTIONS, VIOLATION. — 1. Except as provided in sections 643.300 to 643.355, all motor vehicles which are domiciled, registered or primarily operated in an area for which the commission has established a motor vehicle emissions inspection program pursuant to sections 643.300 to 643.355, which may include all motor vehicles owned by residents of a county of the first classification without a charter form of government with a

population of less than one hundred thousand inhabitants according to the most recent decennial census who have chosen to have a biennial motor vehicle registration pursuant to section 301.147, RSMo, shall be inspected and approved prior to sale or transfer. In addition, any such vehicle manufactured as an even-numbered model year vehicle shall be inspected and approved under the emissions inspection program established pursuant to sections 643.300 to 643.355 in each even-numbered calendar year and any such vehicle manufactured as an odd-numbered model year vehicle shall be inspected and approved under the emissions inspection program established pursuant to sections 643.300 to 643.355 in each odd-numbered calendar year. All motor vehicles subject to the inspection requirements of sections 643.300 to 643.355 shall display a valid emissions inspection sticker, and when applicable, a valid emissions inspection certificate shall be presented at the time of registration or registration renewal of such motor vehicle.

2. No emission standard established by the commission for a given make and model year shall exceed the lesser of the following:

(1) The emission standard for that vehicle model year as established by the United States Environmental Protection Agency; or

(2) The emission standard for that vehicle make and model year as established by the vehicle manufacturer.

3. The inspection requirement of subsection 1 of this section shall apply to all motor vehicles except:

(1) Motor vehicles with a manufacturer's gross vehicle weight rating in excess of eight thousand five hundred pounds;

(2) Motorcycles and motortricycles if such vehicles are exempted from the motor vehicle emissions inspection under federal regulation and approved by the commission by rule;

(3) Model year vehicles prior to 1971;

(4) Vehicles which are powered exclusively by electric or hydrogen power or by fuels other than gasoline which are exempted from the motor vehicle emissions inspection under federal regulation and approved by the commission by rule;

(5) Motor vehicles registered in an area subject to the inspection requirements of sections 643.300 to 643.355 which are domiciled and operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300 to 643.355, but only if the owner of such vehicle presents to the department an affidavit that the vehicle will be operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300 to 643.355 for the next twenty-four months, and the owner applies for and receives a waiver which shall be presented at the time of registration or registration renewal; **[**and**]**

(6) New and unused motor vehicles, of model years of the current calendar year and of any calendar year within two years of such calendar year, which have an odometer reading of less than six thousand miles at the time of original sale by a motor vehicle manufacturer or licensed motor vehicle dealer to the first user**; and**

(7) Historic motor vehicles registered pursuant to section 301.131, RSMo.

4. The commission may, by rule, allow inspection reciprocity with other states having equivalent or more stringent testing and waiver requirements than those established pursuant to sections 643.300 to 643.355.

5. (1) At the time of sale, a licensed motor vehicle dealer, as defined in section 301.550, RSMo, may choose to sell a motor vehicle subject to the inspection requirements of sections 643.300 to 643.355 either:

(a) With prior inspection and approval as provided in subdivision (2) of this subsection; or

(b) Without prior inspection and approval as provided in subdivision (3) of this subsection.

(2) If the dealer chooses to sell the vehicle with prior inspection and approval, the dealer shall disclose, in writing, prior to sale, whether the vehicle obtained approval by meeting the emissions standards established pursuant to sections 643.300 to 643.355 or by obtaining a waiver pursuant to section 643.335. A vehicle sold pursuant to this subdivision by a licensed motor

vehicle dealer shall be inspected and approved within the one hundred twenty days immediately preceding the date of sale, and, for the purpose of registration of such vehicle, such inspection shall be considered timely.

(3) If the dealer chooses to sell the vehicle without prior inspection and approval, the purchaser may return the vehicle within ten days of the date of purchase, provided that the vehicle has no more than one thousand additional miles since the time of sale, if the vehicle fails, upon inspection, to meet the emissions standards specified by the commission and the dealer shall have the vehicle inspected and approved without the option for a waiver of the emissions standard and return the vehicle to the purchaser with a valid emissions certificate and sticker within five working days or the purchaser and dealer may enter into any other mutually acceptable agreement. If the dealer chooses to sell the vehicle without prior inspection and approval, the dealer shall disclose conspicuously on the sales contract and bill of sale that the purchaser has the option to return the vehicle within ten days, provided that the vehicle has no more than one thousand additional miles since the time of sale, to have the dealer repair the vehicle and provide an emissions certificate and sticker within five working days if the vehicle fails, upon inspection, to meet the emissions standards established by the commission, or enter into any mutually acceptable agreement with the dealer. A violation of this subdivision shall be an unlawful practice as defined in section 407.020, RSMo. No emissions inspection shall be required pursuant to sections 643.300 to 643.360 for the sale of any motor vehicle which may be sold without a certificate of inspection and approval, as provided pursuant to subsection 2 of section 307.380, RSMo.

Approved July 10, 2001

SB 436 [SB 436]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Requires licensee to apply for a duplicate commercial driver's license when a name change occurs.

AN ACT to repeal sections 302.177 and 302.735, RSMo 2000, relating to the issuance of driver's licenses, and to enact in lieu thereof two new sections relating to the same subject.

SECTION

A. Enacting clause.
302.177. Licenses, fees, duration, age-based.
302.735. Application for commercial license, contents, fee, expiration, duration, duplicate license — new resident, application dates — falsification of information, ineligibility for license, when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 302.177 and 302.735, RSMo 2000, are repealed and two new sections enacted in lieu thereof, to be known as sections 302.177 and 302.735, to read as follows:

302.177. LICENSES, FEES, DURATION, AGE-BASED. — 1. To all applicants for a license or renewal to transport persons or property classified in section 302.015 who are at least twenty-one years of age **and under the age of seventy**, and who submit a satisfactory application and meet the requirements set forth in sections 302.010 to 302.605, the director shall issue or renew a

license upon the payment of a fee of thirty dollars; except that, no license shall be issued if an applicant's license is currently suspended, taken up, canceled, revoked, or deposited in lieu of bail.

2. To all applicants for a license or renewal who are between twenty-one and sixty-nine years of age, and who submit a satisfactory application and meet the requirements set forth in sections 302.010 to 302.605, the director shall issue or renew a license upon the payment of a fee of fifteen dollars; except that, no license shall be issued if an applicant's license is currently suspended, taken up, canceled, revoked, or deposited in lieu of bail.

3. All licenses issued pursuant to subsections 1 and 2 of this section shall expire on the applicant's birthday in the sixth year after issuance and must be renewed on or before the date of expiration, which date shall be shown on the license. The director shall have the authority to stagger the expiration date of driver's licenses and nondriver's licenses being **[**issue**] issued** or renewed over a six-year period.

4. To all applicants for a license or renewal to transport persons or property classified in section 302.015 who are between eighteen and twenty-one years of age **or greater than sixty-nine years of age**, and who submit a satisfactory application and meet the requirements set forth in sections 302.010 to 302.605, the director shall issue or renew a license upon the payment of a fee of fifteen dollars.

5. To all other applicants for a license or renewal less than twenty-one years of age or greater than sixty-nine years of age who submit a satisfactory application and meet the requirements set forth in sections 302.010 to 302.605, the director shall issue or renew a license upon the payment of a fee of seven dollars and fifty cents. All licenses issued pursuant to subsections 4 and 5 of this section shall expire on the applicant's birthday in the third year after issuance.

6. The director of revenue may adopt any rules and regulations necessary to carry out the provisions of this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

302.735. APPLICATION FOR COMMERCIAL LICENSE, CONTENTS, FEE, EXPIRATION, DURATION, DUPLICATE LICENSE — NEW RESIDENT, APPLICATION DATES — FALSIFICATION OF INFORMATION, INELIGIBILITY FOR LICENSE, WHEN. — 1. The application for a commercial driver's license shall include, but not be limited to, the legal name, mailing and residence address, if different, a physical description of the person, including sex, height, weight and eye color, the person's Social Security number, date of birth and any other information deemed appropriate by the director.

2. The application for a commercial driver's license or renewal shall be accompanied by the payment of a fee of forty dollars. The fee for a duplicate commercial driver's license shall be twenty dollars. A commercial driver's license shall expire on the applicant's birthday in the sixth year after issuance and must be renewed on or before the date of expiration. The director shall have the authority to stagger the issuance or renewal of commercial driver's license applicants over a six-year period. When a person changes such person's name**[**, mailing or residence address, such person shall notify the director**] an application for a duplicate license shall be made to the director of revenue. When a person changes such person's mailing address or residence the applicant shall notify the director of revenue of said change, however, no application for a duplicate license is required**. To all applicants for a commercial license or renewal who are between eighteen and twenty-one years of age **and seventy years of age and older**, the application shall be accompanied by a fee of twenty dollars. A commercial license issued pursuant to an applicant less than twenty-one years of age **and seventy years of age and older** shall expire on the applicant's birthday **in** the third year after issuance.

3. Within thirty days after moving to this state, the holder of a commercial driver's license shall apply for a commercial driver's license in this state. The applicant shall meet all other

requirements of sections 302.700 to 302.780, except that the director may waive the driving test for a commercial driver's license as required in section 302.720 if the applicant for a commercial driver's license has a valid commercial driver's license from a state which has requirements for issuance of such license comparable to those in this state.

4. Any person who falsifies any information in an application or test for a commercial driver's license shall not be licensed to operate a commercial motor vehicle, or the person's commercial driver's license shall be canceled, for a period of one year after the director discovers such falsification.

Approved July 10, 2001

SB 441 [HCS SB 441]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows Warrensburg to receive bids to be the depositary of city funds from banks at every regular meeting.

AN ACT to repeal section 95.280, RSMo 2000, relating to cities of the third class, and to enact in lieu thereof one new section relating to the same subject, with penalty provisions.

SECTION
A. Enacting clause.
95.280. Depositary for city funds, how selected.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 95.280, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 95.280, to read as follows:

95.280. DEPOSITARY FOR CITY FUNDS, HOW SELECTED. — 1. Subject to the provisions of section 110.030, RSMo, the city council, at its regular meetings in July of each year, may receive sealed proposals for the deposit of the city funds from banking institutions doing business within the city that desire to be selected as the depositary of the funds of the city. Notice that bids will be received shall be published by the city clerk not less than one nor more than four weeks before the meeting, in some newspaper published in the city. Any banking institution doing business in the city, desiring to bid, shall deliver to the city clerk, on or before the day of the meeting, a sealed proposal stating the rate percent upon daily balances that the banking institution offers to pay to the city for the privilege of being the depositary of the funds of the city for the year next ensuing the date of the meeting; or, in the event that the selection is made for a less term than one year, as herein provided, then for the time between the date of the bid and the next regular time for the selection of a depositary. It is a misdemeanor for the city clerk or other person to disclose directly or indirectly the amount of any bid to any person before the selection of the depositary.

2. Notwithstanding the provisions of subsection 1 of this section to the contrary, the city council of any third class city with a population of more than fifteen thousand and less than nineteen thousand that is located in any county of the fourth classification with a population of more than forty thousand and less than forty-eight thousand three hundred may receive sealed proposals for the deposit of city funds from banking institutions doing business within the city at any of the regular meetings of such city. The city shall send

notice of bids to each banking institution in the city by regular mail at the time the notice is published in the newspaper in subsection 1 of this section. The banking institution selected as the depositary shall be offered a depositary contract for a maximum of two years. Any such city shall follow the bid procedure established in subsection 1 of this section, except as otherwise provided in this subsection.

Approved July 6, 2001

SB 442 [SB 442]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows individuals to obtain a Safari Club license plate after paying a special fee.

AN ACT to amend chapter 301, RSMo, by adding thereto one new section relating to special license plates for Safari Club International.

SECTION
A. Enacting clause.
301.3081. Safari Club International specialized license plate, issuance, fees.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 301, RSMo, is amended by adding thereto one new section, to be known as section 301.3081, to read as follows:

301.3081. SAFARI CLUB INTERNATIONAL SPECIALIZED LICENSE PLATE, ISSUANCE, FEES. — 1. Any person may receive license plates as prescribed in this section, for issuance either to passenger motor vehicles subject to the registration fees provided in section 301.055, or for a local or nonlocal property-carrying commercial motor vehicle licensed for a gross weight not in excess of twelve thousand pounds as provided in section 301.057 or 301.058, after an annual payment of an emblem-use authorization fee to Safari Club International. Safari Club International hereby authorizes the use of its official emblem to be affixed on multiyear personalized license plates as provided in this section. Any contribution to Safari Club International derived from this section, except reasonable administrative costs, shall be used solely for the purposes of Safari Club International. Any member of Safari Club International may annually apply for the use of the emblem.

2. Upon annual application and payment of a twenty-five dollar emblem-use contribution to Safari Club International, Safari Club International shall issue to the vehicle owner, without further charge, an emblem-use authorization statement, which shall be presented by the owner to the department of revenue at the time of registration of a motor vehicle. Upon presentation of the annual statement, payment of a fifteen dollar fee in addition to the registration fees and documents which may be required by law, the department of revenue shall issue to the vehicle owner a personalized license plate which shall bear the emblem of Safari Club International. Such license plates shall be made with fully reflective material with a common color scheme and design, shall be clearly visible at night, and shall be aesthetically attractive, as prescribed by section 301.130.

3. A vehicle owner, who was previously issued a plate with the Safari Club International emblem authorized by this section but who does not provide an emblem-use

authorization statement at a subsequent time of registration, shall be issued a new plate which does not bear the Safari Club International emblem, as otherwise provided by law. The director of revenue shall make necessary rules and regulations for the administration of this section, and shall design all necessary forms required by this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

Approved July 6, 2001

SB 443 [SB 443]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Removes the requirement that State Water Patrol officers be bonded.

AN ACT to repeal section 306.165, RSMo 2000, relating to water patrol officers, and to enact in lieu thereof one new section relating to the same subject with an emergency clause.

SECTION
A. Enacting clause.
306.165. Water patrol officer, powers, duties and jurisdiction of.
B. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 306.165, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 306.165, to read as follows:

306.165. WATER PATROL OFFICER, POWERS, DUTIES AND JURISDICTION OF. — Each water **[**patrolman**] patrol officer** appointed by the Missouri state water patrol and each of such other employees as may be designated by the patrol, before entering upon his **or her** duties, shall take and subscribe an oath of office to perform **[**his**] all** duties faithfully and impartially, and shall be given a certificate of appointment, a copy of which shall be filed with the secretary of state, granting him all the powers of a peace officer to enforce all laws of this state, upon all of the following:

(1) The waterways of this state bordering the lands set forth in subdivisions (2), (3), (4), and (5) of this section;

(2) All federal land, where not prohibited by federal law or regulation, and state land adjoining the waterways of this state;

(3) All land within three hundred feet of the areas in subdivision (2) of this section;

(4) All land adjoining and within six hundred feet of any waters impounded in areas not covered in subdivision (2) with a shoreline in excess of four miles;

(5) All land adjoining and within six hundred feet of the rivers and streams of this state;

(6) Any other jurisdictional area, pursuant to the provisions of section 306.167. Each water **[**patrolman**] patrol officer** may board any watercraft at any time, with probable cause, for the purpose of making any inspection necessary to determine compliance with the provisions of this chapter. Each water **[**patrolman**] patrol officer** may arrest on view**[**,**]** and without a warrant**[**,**]** any person he **or she** sees violating or who **[**he**] such patrol officer** has reasonable grounds to believe has violated any law of this state, upon any water or land area subject to his **or her** jurisdiction as provided in this section. **[**It is further provided that each water patrolman

shall be bonded in like manner and amount as sheriffs under section 57.020, RSMo.**]** Each water **[**patrolman**] patrol officer** shall, within six months after receiving **[**his**] a** certificate of appointment, satisfactorily complete a law enforcement training course including six hundred hours of actual instruction conducted by a duly constituted law enforcement agency or any other school approved **[**under**] pursuant to** chapter 590, RSMo.

SECTION B. EMERGENCY CLAUSE. — Because the effective patrol of Missouri's waters are important to this state, section 306.165 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section 306.165 of this act shall be in full force and effect upon its passage and approval.

Approved May 16, 2001

SB 451 [SB 451]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows spending of the Energy Set-aside Program Fund for administration of the energy responsibilities and activities of the Department of Natural Resources.

AN ACT to repeal section 640.665, RSMo 2000, relating to the energy set-aside program fund, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
640.665. Energy set-aside program fund.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 640.665, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 640.665, to read as follows:

640.665. ENERGY SET-ASIDE PROGRAM FUND. — 1. The state treasurer shall establish, maintain, and administer a special trust fund to be administered by the department and to be known as the "Energy Set-aside Program Fund", from which applicants as determined by the department may seek and obtain loans and financial assistance. The department shall determine which applicants shall obtain loans or financial assistance as provided in sections 640.651 to 640.686.

2. All moneys duly authorized and appropriated by the general assembly, all moneys received from federal funds, gifts, bequests, donations or any other moneys so designated, all moneys received pursuant to sections 640.651 to 640.686, and all interest earned on and income generated from moneys in the fund shall be paid to and deposited in the energy set-aside program fund.

3. All principal deposits, as authorized in subsection 2 of this section, and all repayments of loans as specified in subsection 6 of section 640.660, to the energy set-aside program fund shall be available to be issued and reissued for loans and financial assistance as authorized by sections 640.651 to 640.686. After appropriation from the general assembly, the department may expend any fees or interest earned on the energy set-aside program fund for the administration of the **[**loan programs in sections 640.651 to 640.686**] department's energy responsibilities and activities**.

4. The commissioner of administration shall disburse such moneys from the fund at such times as are authorized by the department.

5. Except as otherwise provided in sections 640.651 to 640.686, the provisions of section 33.080, RSMo, requiring the transfer of unexpended funds to the general revenue fund of the state shall not apply to funds in the energy set-aside program fund.

Approved June 7, 2001

SB 462 [CCS HCS SB 462]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Removes restriction on cooperative marketing associations dealing with non-members.

AN ACT to repeal sections 252.303, 252.306, 252.309, 252.315, 252.321, 252.324, 252.330, 252.333, 272.010, 272.020, 272.040, 272.050, 272.060. 272.070, 272.100, 272.110, 272.130, 272.150, 272.160, 272.170, 272.180, 272.190, 272.200, 274.060, 278.080, 278.220, 278.240, 278.245, 278.250, 278.280, 278.290, 278.300, 322.010, 348.432, 409.401, 414.032, 578.012 and 578.023, RSMo 2000, and to enact in lieu thereof sixty new sections relating to agriculture, with a penalty provision and an emergency clause for a certain section.

SECTION

A. Enacting clause.
252.303. Agroforestry program developed — who may develop plan.
252.306. Definitions.
252.309. Incentive payments — agreements with landowners — amount of payments.
252.315. Application for participation — contents — review of application — administrative procedure.
252.321. Agroforestry demonstration areas established.
252.324. Rules and regulations, procedure.
252.330. Payment for planting trees.
252.333. Federal incentive payments for land enrolled in the program, duration.
262.800. Farmland protection act, purpose.
262.801. Farming purposes defined.
262.802. Abeyance of water and sewer assessments, when — applicability — charges, when paid, amount — notice provided, contents — disputes, procedure.
262.805. Notice of agricultural zoning presumed, when — uses of agricultural land — hazards contained on agricultural land.
262.810. Eminent domain, public hearing required before taking property.
272.010. Field to be enclosed by fence.
272.020. Fencing requirements.
272.040. Judge may appoint viewers to view fence — compensation of appointees.
272.050. Persons injuring animals liable for damages, when.
272.060. Division fences — rights of parties in, how determined.
272.070. Duty of judge if owners disagree — apportionment of costs.
272.100. Duties of persons appointed — their fees.
272.110. Division fences to be kept in repair.
272.130. Judgment of associate circuit judge reviewed in same manner as other civil actions.
272.132. Total cost of fence attributable to one landowner, when.
272.134. Agreement for no fence permitted.
272.136. Landowner may exceed lawful fence requirements.
274.060. Powers of associations.
278.080. Establishing commission — members — powers and duties — rulemaking — variances to rules permitted, procedure.
278.220. Watershed district located in more than one district, procedure — certificate recorded, where.
278.240. District board of supervisors to govern watershed district, combined boards to govern, when — trustees of watershed district, how elected, terms — powers of directors — mileage reimbursement authorized.

278.245. Condemnation authorized, when — other powers of governing body or trustees — taxation authorized.
278.250. Organization tax — annual tax for watershed district — limitation — levy — collection — lien enforcement — rate of tax — property tax (section 137.073) rate if no levy imposed for year.
278.280. Projects, how financed — special assessment appraisers, duties, compensation — assessment resolution, hearings — election — bonds — special levy.
278.290. Disestablishment of watershed district, procedure.
278.300. State soil and water districts commission to control watershed districts formerly under a disestablished soil and water conservation district.
322.010. Definitions.
322.140. Animal bite, report to county health department in absence of county rules — investigation of report — responsibility of owner — rulemaking authority.
322.145. Liability of owner for animal bite.
340.335. Loan repayment program for veterinary graduates — fund created.
340.337. Definitions.
340.339. Certain areas designated as areas of defined need by board by rule.
340.341. Eligibility standards for loan repayment program — rulemaking authority.
340.343. Contract for loan repayment, contents — specific practice sites may be stipulated.
340.345. Loan repayment to include principal, interest and related expenses — annual limit.
340.347. Liability for amounts paid by program, when — breach of contract, amount owed to state.
340.350. Rulemaking authority.
348.432. New generation cooperative incentive tax credit — definitions — requirements — limitations.
407.857. Reimbursement for warranty work performed by certain retail sellers of power equipment.
409.401. Definitions.
414.032. Requirements, standards, certain fuels — alcohol additives and oxygenate blends, notice to buyer — director may inspect fuels, purpose.
414.433. Purchase of biodiesel fuel by school districts — contracts with new generation cooperatives — definitions — rulemaking authority.
537.353. Liability for damage or destruction of field crop products, when — court costs awarded, when.
578.008. Spreading disease to livestock, crime of — penalty — defenses.
578.012. Animal abuse — penalties.
578.023. Keeper of dangerous wild animals must register animals, exceptions — penalty.
578.029. Knowingly releasing an animal, crime of — penalty.
578.414. The crop protection act — director defined.
578.416. Prohibited acts.
578.418. Violations, penalties — civil actions, when.
578.420. Investigation of alleged violations — rulemaking authority.
1. Landowners' right to private water systems and ground source systems.
272.150. Saltpeter works to be fenced.
272.160. Damages for failure to fence.
272.170. Cotton gins to be enclosed.
272.180. Cotton seed not to be scattered outside of enclosure.
272.190. Penalty for violation.
272.200. Lands upon which poisonous crops are planted shall be enclosed — penalty.
B. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 252.303, 252.306, 252.309, 252.315, 252.321, 252.324, 252.330, 252.333, 272.010, 272.020, 272.040, 272.050, 272.060. 272.070, 272.100, 272.110, 272.130, 272.150, 272.160, 272.170, 272.180, 272.190, 272.200, 274.060, 278.080, 278.220, 278.240, 278.245, 278.250, 278.280, 278.290, 278.300, 322.010, 348.432, 409.401, 414.032, 578.012 and 578.023, RSMo 2000, are repealed and sixty new sections enacted in lieu thereof, to be known as sections 252.303, 252.306, 252.309, 252.315, 252.321, 252.324, 252.330, 252.333, 262.800, 262.801, 262.802, 262.805, 262.810, 272.010, 272.020, 272.040, 272.050, 272.060, 272.070, 272.100, 272.110, 272.130, 272.132, 272.134, 272.136, 274.060, 278.080, 278.220, 278.240, 278.245, 278.250, 278.280, 278.290, 278.300, 322.010, 322.140, 322.145, 340.335, 340.337, 340.339, 340.341, 340.343, 340.345, 340.347, 340.350, 348.432, 407.857, 409.401, 414.032, 414.433, 537.353, 578.008, 578.012, 578.023, 578.029, 578.414, 578.416, 578.418, 578.420 and 1, to read as follows:

252.303. AGROFORESTRY PROGRAM DEVELOPED — WHO MAY DEVELOP PLAN. — The department **[**shall**] may** develop and implement, in cooperation with the University of Missouri

college of agriculture, **the University of Missouri Center for Agroforestry,** the University of Missouri extension service, the Missouri department of natural resources, private industry councils, the United States Department of Agriculture, and the Missouri department of agriculture, an agroforestry program. The program shall be designed to **[**complement a new or extended federal conservation reserve plan which as part of its provisions allows and encourages**]** **encourage** the development of a state program of agroforestry, and shall encourage soil conservation and diversifications of the state's agricultural base through the use of trees planted **[**or otherwise established in lanes with grass strips or row crops or both in between the lanes**] in an agroforestry configuration to accommodate alley cropping, forested-riparian buffers, silvopasture and windbreaks**.

252.306. DEFINITIONS. — As used in sections 252.300 to 252.333, the following terms shall mean:

(1) **"Alley cropping", planting rows of trees at wide spacings and cropping the alleyways;**

(2) "Conservation reserve program", the conservation reserve program authorized by the Federal Food Security Act of 1985, as amended, (Title XII, P.L. 99-198), or its successor program;

[(2)**] (3)** "Department", the Missouri department of conservation;

[(3)**] (4)** "Director", the director of the Missouri department of conservation;

[(4)**] (5)** "Eligible land", agricultural land which is susceptible to soil erosion **[**and is placed in the federal conservation reserve program as of or after August 28, 1990, or other highly erosive land which is not enrolled in the conservation reserve program, as determined by the director of the department**] that has a recent cropping history, marginal pasture land, land surrounding livestock enclosures and riparian zones**;

(6) "Eligible practices", single or multiple rows of trees, alone or combined with other plants such as grass, conventional row crops or horticulture crops, and animals located at intervals of distance within or around fields, around livestock enclosures, and along streams and rivers, specifically designed to provide production and environmental enhancement benefits in accordance with the practices identified in section 252.303;

[(5)**] (7)** "Enhancement phase", the period of time, not to exceed ten years, immediately following the establishment phase, during which payments are made by the state of Missouri to landowners who use their eligible land for agroforestry purposes as required by the department;

[(6)**] (8)** "Establishment phase", the period of time during which eligible land is **[**placed and held in the federal conservation reserve program or a six-month period for other highly erosive land which is not enrolled in the conservation reserve program**] being prepared for planting trees and developing agroforestry practices**, as determined by the director of the department**;**

(9) "Forested-riparian buffers", a combination of trees and other vegetation;

(10) "Silvopasture", combining trees with forage and livestock;

(11) "Windbreaks", planting single or multiple rows of trees for protection and enhanced production of crops and animals.

252.309. INCENTIVE PAYMENTS — AGREEMENTS WITH LANDOWNERS — AMOUNT OF PAYMENTS. — 1. The director may enter into agreements with individual landowners to make **[**such**] incentive** payments **during the enhancement phase** to landowners. Recipients of such payments shall utilize the land for which such payment is made for agroforestry purposes as required by the director **[**under**] pursuant to** sections 252.300 to 252.333. **[**In administering such payments, the director may make such agreements with the United States Department of Agriculture as the director deems necessary or appropriate.**]**

2. The amount of state incentive payment made to a landowner per acre of eligible land shall be **[**the lesser of:

(1)**]** an amount which, when added to any cash or in-kind **net** income produced by crops raised on the land, is substantially equal to the amount per acre previously paid or which would have been paid to the landowner under the federal conservation reserve program**[**; or

(2) An amount less than that provided in subdivision (1) of this subsection, if such lesser amount does not significantly reduce the number of acres for which agroforestry incentive payments are made under this section**]**.

3. If an application made pursuant to section 252.315 is approved by the director, the director shall develop a schedule of annual payments to be made by the state.

4. The state shall not make any payment to a landowner to maintain the use of eligible land during the enhancement phase for agroforestry purposes after ten years have elapsed since the first such incentive payment is made.

252.315. APPLICATION FOR PARTICIPATION — CONTENTS — REVIEW OF APPLICATION — ADMINISTRATIVE PROCEDURE. — 1. To participate in the program, the landowner shall make application to the director in writing. The written application shall show the number of acres to be placed in the program and that the land which is to be placed in the agroforestry program meets the eligibility requirements of this section. The application shall also contain a detailed plan of the landowner's proposal to meet the requirements of sections 252.300 to 252.333, including the type **and number** of **[**tree**] trees** to be planted, established, or managed, the type of compatible grass **[**and the row crop or crops to be grown in the alternative strips**]**, **other crops** and such other information as may be deemed necessary. **The number of trees required to satisfy eligibility may vary with agroforestry practice, but in each case shall be a sufficient number to guarantee the success of the practice and shall be consistent with standards established for each practice.**

2. The director shall review each application. In reviewing the application the director shall determine the type or types of soil located in the area of the land proposed to be included in the agroforestry program and shall apply the land capability classification system to determine the potential or limitations of the land for inclusion in the program. Before the director acts upon the application, an on-site inspection shall be made by a representative of the department of conservation or its approved agent. The inspecting representative shall attest to the efficacy of the agroforestry plan to be used, the number of acres to be placed under agroforestry management, the species **and number** of trees to be planted, established, or managed, and **[**agronomic**] other crop** components of the proposed program. After the report of the on-site inspector and the review by the director, the director shall determine the landowner's eligibility to participate in the agroforestry program and shall determine the amount of cost sharing, including in-kind and labor components, for the landowner. If the director fails to approve an application, the aggrieved landowner may request a hearing before the conservation commission or its authorized representative within thirty days of notice to the landowner of the failure of the conservation department to approve the application, or the landowner may proceed under the provisions of section 536.150, RSMo, as if the act of the conservation department was one not subject to administrative review. If an action is brought pursuant to section 536.150, RSMo, venue shall be in Cole County.

252.321. AGROFORESTRY DEMONSTRATION AREAS ESTABLISHED. — **[**The director shall develop demonstration agroforestry conservation programs to illustrate to landowners in this state the benefits and advantages of participation in such a program. Demonstration sites shall be selected by the director to involve various soil types and various erosion dangers and shall be geographically located among the major farming areas of the state. The director shall contract with the University of Missouri extension service for the delivery of the demonstration educational component of sections 252.300 to 252.333.**] The University of Missouri center of agroforestry and extension service, in consultation with the director, shall establish**

agroforestry demonstration areas, and develop and deliver the educational components of sections 252.300 to 252.333.

252.324. RULES AND REGULATIONS, PROCEDURE. — 1. The director may promulgate rules and regulations necessary to carry out the provisions of sections 252.300 to 252.333. Before promulgating any such rule, the director shall seek the advice and comments of the University of Missouri college of agriculture, **the University of Missouri Center for Agroforestry,** the University of Missouri extension service, the Missouri department of natural resources, private industry councils, **[**the United States Department of Agriculture,**]** the Missouri department of economic development and the Missouri department of agriculture. **The director may seek advice and comments before promulgating rules and regulations from the United States Department of Agriculture and any other entities deemed advisable by the director.** No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of **[**section 536.024**] chapter 536**, RSMo.

2. The Missouri department of conservation may contract with the division of soil and water conservation of the Missouri department of natural resources for any administrative functions required under the provisions of sections 252.300 to 252.333.

252.330. PAYMENT FOR PLANTING TREES. — During the establishment phase, the director may pay for the planting of trees on eligible land which is used for agroforestry pursuant to sections 252.300 to 252.333. Such payment shall be limited to expenses which are determined to be reasonable and necessary by the director**, but shall not exceed seventy-five percent of the cost of establishment**.

252.333. FEDERAL INCENTIVE PAYMENTS FOR LAND ENROLLED IN THE PROGRAM, DURATION. — The director may make incentive payments for agroforestry purposes of land **[**which is susceptible to soil erosion**] enrolled in this program**. The duration of such payments shall not exceed ten years. The director may also expend funds to plant trees on such land. Such expenditures may include both planting and associated practices as determined by the director.

262.800. FARMLAND PROTECTION ACT, PURPOSE. — Sections 262.800 to 262.810 shall be known and may be cited as the "Farmland Protection Act". The purpose of the farmland protection act shall be to:

(1) Protect agricultural, horticultural and forestry land;

(2) Promote continued economic viability of agriculture, horticulture and forestry as a business;

(3) Promote the continued economic viability of those businesses dependent on providing materials, equipment and services to agriculture, horticulture and forestry;

(4) Promote quality of life in the agriculture community; and

(5) Protect owners of property used for farming purposes from unreasonable costs associated with assessments for improvements running across the land.

262.801. FARMING PURPOSES DEFINED. — For purposes of the farmland protection act, "farming purposes" shall be defined as at least three-fourths of the property used for farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry or livestock, breeding, pasturing, training or boarding of equines or mules, and production of poultry or livestock products in an unmanufactured state.

262.802. ABEYANCE OF WATER AND SEWER ASSESSMENTS, WHEN — APPLICABILITY — CHARGES, WHEN PAID, AMOUNT — NOTICE PROVIDED, CONTENTS — DISPUTES, PROCEDURE. — 1. This state or any political subdivision of this state shall hold water and

sewer assessments in abeyance, without interest, until improvements on such property are connected to the water or sewer system for which the assessment was made. However, if a political subdivision requires the property to be connected to the sewer system of the political subdivision pursuant to section 644.027, RSMo, such connection shall not trigger the payment of the assessment.

2. The provisions of this section shall apply only to tracts of real property:

(1) Comprised of ten or more contiguous acres; and

(2) Used for farming purposes.

3. At the time improvements on such property are connected to the water or sewer system, the owner shall pay to the political subdivision an amount equal to the proportionate charge for the number of system lines connected to improvements on such property.

4. The owner shall not be charged based on the total cost of running the water or sewer system to or across the owner's real property. Rather, the assessment shall be based on:

(1) A reasonable hookup charge;

(2) A proportionate charge for the number of improvements requested to be connected to such assessments in relation to the total capacity of the system; and

(3) The anticipated proportionate burden to the system.

5. The period of abeyance shall end when the property ceases to be used for farming purposes.

6. When the period of abeyance ends, the assessment is payable in accordance with the terms set forth in the assessment resolution, so long as such terms are not inconsistent with sections 262.800 to 262.810. To the extent that such terms are inconsistent, the provisions of sections 262.800 to 262.810 shall control.

7. All statutes of limitation pertaining to action for enforcement of payment for assessments shall be suspended during the time that any assessment is held in abeyance without interest.

8. In addition to any other federal, state or local requirements concerning assessments for improvements, the political subdivision responsible for assessments shall notify owners of all properties which are proposed to be assessed of the amount proposed to be charged and the terms of payment for each improvement and that the property may be subject to protection according to the provisions of the Missouri farmland protection act.

(1) The notice shall:

(a) Be provided in writing to the owners and all parties of recorded interest, at the address listed on records of the county for the receipt of real property tax statements for such tract of land;

(b) Be sent certified mail, return receipt requested, restricted delivery to addressee;

(c) Clearly state the total amount of the proposed assessment for said parcel of real property;

(d) State in the body of the letter as follows:

"As owners of the property proposed to be assessed, you have one hundred eighty days from the date of receipt of this notice to accept, in writing, the amount of the assessment stated herein or to dispute the amount by filing an action in the circuit court of the county where the real property is located. If your property is comprised of ten or more contiguous acres, your property may be eligible for protection from payment of the assessment under the Missouri Farmland Protection Act as provided in chapter 262, RSMo, and you have sixty days from the date of receipt of this notice to notify (the political subdivision proposing the assessment), in writing, of your intent to claim protection for your property under the Act. Whether or not you claim the protection under the Farmland Protection Act, you have the right to dispute the amount of the assessment in circuit court.";

(e) Owners must be given the address for sending notice to the political subdivision with the letter; and

(f) A copy of the farmland protection act shall be included with the letter.

(2) An owner claiming protection under the farmland protection act does not forfeit the right to contest the amount of the assessment.

9. Any owner of property proposed to be assessed who chooses to dispute the amount of the assessment, shall file an action disputing the amount of the assessment in the circuit court of the county in which the real property subject to the assessment is located. The action disputing the assessment must be filed within one hundred eighty days of receipt of the notice in subsection 8 of this section.

10. Any political subdivision that disputes the applicability of the farmland protection act to property proposed to be assessed shall file an action in the circuit court of the county in which the real property subject to the assessment is located to dispute the applicability of the farmland protection act to said parcel of real property. Such action must be filed within thirty days of receipt of the notice of the claim for protection under the farmland protection act.

11. Nothing in this section shall be construed as diminishing the authority of counties or other political subdivisions to hold assessments in abeyance.

12. The provisions of this section shall not apply to public water supply districts as defined by sections 247.010 to 247.227, RSMo, except that a public water supply district shall not require payment from landowners whose property is crossed to service another tract of land until any improvement on such property is connected to the rural water supply district. At the time such connection is made, the provisions of the farmland protection act shall apply.

13. In a city with a population of at least four hundred thousand located in more than one county, the assessments on a tract of property entitled to protection pursuant to the provisions of the farmland protection act shall be held in abeyance except that an initial payment of an amount not to exceed five hundred dollars per acre of the tract, up to an amount not to exceed ten thousand dollars may be assessed at the time of final judgment concerning the amount of the assessment or upon mutual agreement of the parties as to the amount of the assessment. In all other respects, the provisions of the farmland protection act shall apply.

14. If a political subdivision files any action challenging the constitutionality or to have all or any portion declared null and void or for declaratory judgement of sections 262.800 to 262.810, the state shall be added as a party to any such action and the attorney general of Missouri shall defend such action. Any owner of property that is subject to the provisions of the farmland protection act shall have the right to be apprised of the status of such action. If the property owner requests separate representation in writing, the attorney general may appoint a special assistant attorney general if the property owner asserts an argument in conflict with the arguments asserted by the attorney general. Such special assistant attorney general may continue to represent the property owner for purposes of all appeals. If the political subdivision fails to prevail, whether in whole or in part, in its action, the entire cost of providing representation to the landowner, including reasonable attorney fees and costs, shall be fully reimbursed to the State of Missouri by the political subdivision.

262.805. NOTICE OF AGRICULTURAL ZONING PRESUMED, WHEN — USES OF AGRICULTURAL LAND — HAZARDS CONTAINED ON AGRICULTURAL LAND. — Purchasers of real property within one mile of areas zoned for agriculture or used for farming purposes as defined by the farmland protection act contained in sections 262.800 to 262.810, shall be presumed to have notice of such agriculture zoning or use for farming purposes. Agricultural zoned land or land used for farming purposes may be used for

commercial or hobby operations that may include but is not limited to the following: breeding and rearing of livestock, weaning and treating of livestock, raising and harvesting of crops, application of fertilizers and pesticides, dust, noise, odors, gunfire, burning, extended hours of operation, seasonal operations, timber operations, cultivated and idle land. Agriculture operations typically consist of open and timbered spaces that are private property and are not open to the public or to public access. Agriculture operations contain many hazards, including but not limited to, open water (including ponds, streams, ditches), open pits, brush, brush piles, snakes, untamed and unpredictable animals, electric and barbed fences, storage building and structure, tractors and equipment, and hidden obstacles. Children and adults are not permitted to roam, play or trespass on farm or agriculture property. These activities and conditions may already be regulated by state, federal or local law and nothing herein is meant to exempt such property from any such laws or regulations but is simply notification to purchasers that living in a rural environment does not mean you will live in an environment free of conditions you find irritating, dangerous, or unpleasant.

262.810. EMINENT DOMAIN, PUBLIC HEARING REQUIRED BEFORE TAKING PROPERTY. — Property subject to the farmland protection act shall not be taken in whole or in part by any political subdivision of this state by eminent domain except after a public hearing pursuant to chapter 610, RSMo.

272.010. FIELD TO BE ENCLOSED BY FENCE. — All fields and enclosures **where animals are kept** shall be enclosed by **[**hedge, or with a fence sufficiently close, composed of posts and rails, posts and palings, posts and planks, posts and wires, palisades or rails alone, laid up in a manner commonly called a worm fence, or of turf, with ditches on each side, or of stone or brick**] a lawful fence as defined in section 272.020**.

272.020. FENCING REQUIREMENTS. — **[**All hedges shall be at least four feet high, and all fences composed of posts and rails, posts and palings, posts and wire, posts and boards or palisades, shall be at least four and one-half feet high, with posts set firmly in the ground, not more than eight feet apart, and with rails, palings, wire, boards or palisades securely fastened thereto, and placed at proper distances apart, so as to resist horses, cattle, swine and like stock; and fences composed of woven wire, wire netting or wire mesh shall be at least four and one-half feet high, securely fastened to posts, such posts to be set firmly in the ground, and not more than sixteen feet apart, and such woven wire, wire netting or wire mesh to be of sufficient closeness and strength as to resist horses, cattle, swine and like stock; those composed of turf shall be at least four feet high and with ditches on either side at least three feet wide at the top and three feet deep; and what is known as a worm fence shall be at least five feet high to the top of the rider, or if not ridered, shall be five feet to the top rail or pole, and shall be locked with strong rails or poles or stakes; those composed of stone or brick shall be at least four and one-half feet high; provided, that in counties in this state in which swine are restrained from running at large, all fences built of posts set firmly in the ground, not more than sixteen feet apart, and three barbed wires tensely stretched and securely fastened thereto, and the upper wire being substantially four feet from the ground, and the two remaining wires placed at proper distances below to resist horses, cattle and like stock, and all fences built of posts and rails, or posts and slats, with posts set firmly in the ground, not more than ten feet apart, and with three rails or slats securely fastened thereto, and the upper rail or slat being placed substantially four and one-half feet from the ground, and the two remaining rails or slats to each panel being placed at proper distances below to resist horses, cattle and like stock, and all fences built of posts and boards, with posts set firmly in the ground, not more than eight feet apart, and board substantially one inch thick and six inches wide, securely fastened thereto, and the upper board being at least four and one-half feet high, and the remaining boards placed at proper distances below, to resist

horses, cattle and like stock, shall be deemed and held to be a good and lawful fence; provided, that nothing contained in this section shall be so construed as to relieve any railroad company from the obligation of fencing the right-of-way of said company against hogs, sheep, cattle, horses and like stock.**] 1. Any fence consisting of posts and wire or boards at least four feet high which is mutually agreed upon by adjoining landowners or decided upon by the associate circuit court of the county is a lawful fence.**

2. All posts shall be set firmly in the ground not more than twelve feet apart with wire or boards securely fastened to such posts and placed at proper distances apart to resist horses, cattle and other similar livestock.

272.040. JUDGE MAY APPOINT VIEWERS TO VIEW FENCE — COMPENSATION OF APPOINTEES. — Upon complaint of **[**the party injured to any circuit or associate circuit judge of the county, such circuit or**] either party claiming to be injured because of the trespass or taking up of livestock as described in section 272.030, the** associate circuit judge shall, without delay, issue an order to three disinterested householders of the neighborhood, not of kin to either party, reciting the complaint, and requiring them to view the **[**hedge or**]** fence where the trespass is complained of, and take memoranda of the same, and appear before the **[**judge**] court** on the day set for trial; and their evidence shall determine the lawfulness of such fence. **The persons appointed by the associate circuit judge shall be paid twenty-five dollars each per day for the time actually employed which shall be taxed as costs in the case equally against the parties and collected accordingly.**

272.050. PERSONS INJURING ANIMALS LIABLE FOR DAMAGES, WHEN. — If any person **[**damnified for want of such**] who does not maintain a** sufficient **[**hedge or**]** fence, shall hurt, wound, lame, kill or destroy, or cause the same to be done by shooting, worrying with dogs, or otherwise, any of the animals in this chapter mentioned, such **[**persons**] person** shall satisfy the owner in double damages with costs.

272.060. DIVISION FENCES — RIGHTS OF PARTIES IN, HOW DETERMINED. — **[**Whenever the fence of any owner of real estate, now erected or constructed, or which shall hereafter be erected or constructed, the same being a lawful fence, as defined by sections 272.010 and 272.020, serves to enclose the land of another, or which shall become a part of the fence enclosing the lands of another, on demand made by the person owning such fence, such other person shall pay the owner one-half the value of so much thereof as serves to enclose his land, and upon such payment shall own an undivided half of such fence.**] 1. Whenever the owner of real estate desires to construct or repair a lawful fence, as defined by section 272.020, which divides his or her land from that of another, such owner shall give written notice of such intention to the adjoining landowner. The landowners shall meet and each shall construct or repair that portion of the division fence which is on the right of each owner as the owners face the fence line while standing at the center of their common property line on their own property. If the owners cannot agree as to the part each shall construct or keep in repair, either of them may apply to an associate circuit judge of the county who shall forthwith summon three disinterested householders of the township or county to appear on the premises, giving three days' notice to each of the parties of the time and place where such viewers shall meet, and such viewers shall, under oath, designate the portion to be constructed or kept in repair by each of the parties interested and notify them in writing of the same. Such viewers shall receive twenty-five dollars each per day for the time actually employed, which shall be taxed as court costs.**

2. Existing agreements not consistent with the procedure prescribed by subsection 1 of this section shall be in writing, signed by the agreeing parties, and shall be recorded in the office of the recorder of deeds in the county or counties where the fence line is located. The agreement shall describe the land and the portion of partition fences between

their lands which shall be erected and maintained by each party. The agreement shall bind the makers, their heirs and assigns.

272.070. DUTY OF JUDGE IF OWNERS DISAGREE — APPORTIONMENT OF COSTS. — **[**If the parties interested shall fail to agree as to the value of one-half of such fence, the owner of the fence may apply to a circuit or associate circuit judge of the county, who shall without delay, issue an order to three disinterested householders of the township, not of kin to either party, reciting the complaint, and requiring them to view the fence, estimate the value thereof, and make return under oath to the associate circuit judge on the day named in the order.**] If either party fails to construct or repair his or her portion of the fence in accordance with the provisions of section 272.060 within a reasonable time, the other may petition the associate circuit court of the county to authorize the petitioner to build or repair the fence in a manner to be directed by the court. If the court authorizes such action, the petitioner shall be given a judgment for that portion of the total cost of the fence which is chargeable as the other party's portion of the fence, court costs and reasonable attorney's fees. Any such judgment shall be a lien on the real estate of the party against whom the judgment may be given.**

272.100. DUTIES OF PERSONS APPOINTED — THEIR FEES. — The persons appointed by the associate circuit judge **[**under sections 272.070 and 272.090**] pursuant to section 272.040** to discharge the duties therein specified, shall receive **[**one dollar**] twenty-five dollars** each per day for the time actually employed, which**[**, together with the fees of the associate circuit judge and sheriff,**]** shall be taxed as costs in the case against the parties **[**in proportion to their respective interests,**]** and collected accordingly.

272.110. DIVISION FENCES TO BE KEPT IN REPAIR. — Every person owning a part of a division fence shall keep **his or her portion of** the same in good repair according to the requirements of this chapter, and **[**when said division fence is a hedge, shall properly trim the same at least once a year, to a height not greater than four and one-half feet, and to a breadth not greater than three feet, and for the purpose of trimming said hedge as aforesaid, he shall have the right to**] may** enter upon any land lying adjacent thereto **for such purpose**. **[**Either party owning land adjoining a division fence or hedge may, upon the failure of any of the other parties, have all that part of such division fence belonging to such other parties repaired, upon the failure of such other party to do so, such repairing or trimming to be at the cost of the party so failing to repair or trim his part of such fence; and the party so repairing or trimming such hedge shall always throw the brush trimmed off on his own side of such hedge; and upon neglect or refusal to keep said fence in repair, or to keep said hedge trimmed as provided in this section, such owner shall be liable in double damages to the party injured thereby, and such injured party may enforce the collection of such damages by restraining any cattle or other stock that may break in or come upon his enclosure by reason of the failure of such other party to keep his portion of such division fence in repair and proceeding therewith under the provisions of sections 270.010 to 270.200, RSMo.**]**

272.130. JUDGMENT OF ASSOCIATE CIRCUIT JUDGE REVIEWED IN SAME MANNER AS OTHER CIVIL ACTIONS. — Any person aggrieved by any order or judgment of the associate circuit judge made or entered **[**under**] pursuant to** the provisions of **[**sections 272.040, 272.070 and 272.090**] section 272.040 or 272.070** may have the same reviewed in the same manner as other civil actions.

272.132. TOTAL COST OF FENCE ATTRIBUTABLE TO ONE LANDOWNER, WHEN. — If either of two adjoining landowners does not need a fence, the landowner that needs a fence may build the entire fence and report the total cost to the associate circuit judge who

shall authorize the cost to be recorded on each deed. Should the landowner that claimed no need for a fence subsequently place livestock against the fence, the landowner that built the fence shall be reimbursed for one-half the construction costs share to be determined as provided in section 272.060.

272.134. AGREEMENT FOR NO FENCE PERMITTED. — Nothing in this chapter shall prevent adjoining landowners from agreeing that no fence is needed between their property.

272.136. LANDOWNER MAY EXCEED LAWFUL FENCE REQUIREMENTS. — Nothing in this chapter shall prevent either of adjoining landowners from building the landowner or the landowner's neighbor's portion of a fence in excess of the lawful fence requirements prescribed by this chapter.

274.060. POWERS OF ASSOCIATIONS. — Each association incorporated under this chapter shall have the following powers:

(1) To engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or utilization of any agricultural products produced or delivered to it by its members; the manufacturing or marketing of the by-products thereof; any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; in the financing of any such activities; or in any one or more of the activities specified in this section. **[**No**] The** association**[**, however, shall handle agricultural products of nonmembers nor furnish supplies to nonmembers, in any business year, to an amount greater in value than the agricultural products or the supplies, as the case may be, as are handled for or furnished to members**] shall do at least twenty-five percent of its business with its members**;

(2) To borrow money without limitation as to amount of corporate indebtedness or liability; and to make advance payments and advances to members;

(3) To act as the agent or representative of any member or members in any of the above mentioned activities;

(4) To buy, lease, hold and exercise all privileges of ownership, over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto;

(5) To establish, secure, own and develop patents, trademarks and copyrights;

(6) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged or any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this chapter.

278.080. ESTABLISHING COMMISSION — MEMBERS — POWERS AND DUTIES — RULEMAKING — VARIANCES TO RULES PERMITTED, PROCEDURE. — 1. There is hereby established "The State Soil and Water Districts Commission" to administer for this state the soil and water conservation districts provided for by sections 278.060 to 278.300. The state soil and water districts commission shall formulate policies and general programs for the saving of Missouri soil and water by the soil and water conservation districts, and shall give consideration to the districts' needs based on their character; it shall receive and allocate or otherwise expend for the use or benefit of the soil and water conservation districts any funds appropriated by the general assembly for the use or benefit of such districts, including a soil and water conservation cost-share program; it shall receive and properly convey to the soil and water conservation

districts any other form of aid extended to such districts by any other agency of this state, except that any money or other form of aid raised or provided within a soil and water district for the use or benefit of that soil and water district shall be received and administered by the governing body of that soil and water district; it shall exercise other authority conferred upon it and perform other duties assigned to it by sections 278.060 to 278.300; and it shall be the administrative agency to represent this state in these and all other matters arising from the provisions of sections 278.060 to 278.300.

2. The state soil and water districts commission shall be composed of four ex officio members and six farmer members. The six farmer members shall be appointed by the governor of Missouri with the advice and consent of the senate. Three of the farmer members shall reside in the portion of this state which is north of the Missouri River and three of the farmer members shall reside in the portion of this state which is south of the Missouri River. The membership shall be geographically dispersed with no more than one of the farmer members appointed from a state senatorial district. Not more than four of the farmer members shall be from the same political party. The ex officio members shall be the director of the department of natural resources, the director of the department of agriculture, the director of the department of conservation, and the dean of the college of agriculture of the University of Missouri. Each of the six farmer members shall be holding legal title to a farm, and shall be earning at least the principal part of the member's livelihood from a farm, all at the time of appointment to the commission. The farmer members shall each be appointed for a period of three years. All members of the commission serving as of June 27, 2000, may continue to serve the unexpired portion of the member's current term. There is no limitation on the number of terms that any of the farmer members appointed by the governor may serve. If any farmer member vacates his or her term for any reason prior to the expiration of such term, the governor may appoint a farmer member to serve for the remainder of the unexpired term. Each member of the commission shall continue to serve until the member's successor has been duly appointed and qualified.

3. The state soil and water districts commission may call upon the attorney general of the state for such legal services as it may require.

4. At its first meeting in each calendar year, the state soil and water districts commission shall select from its current members a chairman and a vice chairman. The ex officio members shall not have the power to vote on any matter before the commission. A quorum shall consist of four farmer members. For the determination of any matter within the commission's authority, at a meeting comprised of four farmer members, a concurrence of three shall be required. No business of the commission shall be executed in absence of a quorum. Each farmer member of the soil and water commission shall be entitled to expenses, including travel expenses, necessarily incurred in the discharge of his or her duties as a member of this commission. The state soil and water districts commission shall provide for the execution of surety bonds for all of its employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all its proceedings and of all its resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of all its accounts of receipts and disbursements.

5. In addition to the authority and duty herein assigned to the state soil and water districts commission, it shall have the following authority and duty:

(1) To encourage the formation of soil and water conservation districts in areas where their establishment seems necessary and their administration seems feasible;

(2) To formulate and fix the rules and procedures for fair and impartial referendums on the establishing or disestablishment of soil and water districts and for fair and impartial selection of soil and water district supervisors;

(3) To receive petitions for the establishing of soil and water conservation districts as provided in section 278.100; to determine the validity of these petitions; to conduct hearings upon the subject of these petitions; to determine whether the establishment of a soil and water

district as petitioned would be effective in the saving of soil and water within the proposed area, and whether a soil and water district if established could be feasibly administered; and, upon reaching a favorable conclusion on these matters, to call for a referendum on the establishing of the soil and water district as petitioned;

(4) To advise any soil and water conservation district in developing its program for saving the soil and water in order that such district may become eligible for any form of aid from state or federal sources;

(5) Subject to district allocations by the commission and other resources, to provide training, programs and other assistance to soil and water conservation districts to identify programs that respond to the character of the districts' needs;

(6) To obtain or accept the cooperation and financial, technical or material assistance of the United States or any of its agencies, and of this state or any of its agencies, for the work of such soil and water districts;

(7) To enter into agreements with the United States or any of its agencies on policies and general programs for the saving of Missouri soil and water by the extension of federal aid to any soil and water conservation district; to advise any soil and water conservation district; to advise any soil and water conservation district on the amount or kind of federal aid needed for the effective saving of soil and water in that district; to determine within the limits of available funds or other resources the amount or kind of state aid to be used for saving of soil and water in any soil and water conservation district; and to determine the withholding of state aid of any amount or kind from any soil and water conservation district that has failed to follow the policies of the state soil and water districts commission in any matter under the provisions of sections 278.060 to 278.300;

(8) To give such other proper assistance as the soil and water commission may judge to be useful to any soil and water district in the saving of soil and water in that district;

(9) To promulgate such rules and regulations as may be necessary to effectively administer a state-funded soil and water conservation cost-share program. Any rule or portion of a rule promulgated under the authority of sections 278.060 to 278.300 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo.

6. Unless prohibited by any federal or state law, the commission may grant individual variances to any rule or regulation promulgated thereto, upon presentation of adequate proof, that compliance with sections 278.070 to 278.300, or any rule or regulation, standard, requirement, limitation or order of the commission will have an arbitrary and unreasonable impact on landowners participating in soil and water conservation eligible practices. The commission shall promulgate such rules, regulations and administrative guidelines as necessary to effectively administer this section.

278.220. WATERSHED DISTRICT LOCATED IN MORE THAN ONE DISTRICT, PROCEDURE — CERTIFICATE RECORDED, WHERE. — 1. If the proposed **[**subdistrict**] watershed district** lies in more than one soil and water conservation district, the petition may be presented to the board of soil and water district supervisors of any one of the districts, and the soil and water supervisors of all the districts shall act jointly as a board of soil and water district supervisors with respect **only** to **[**all**]** matters concerning the **[**subdistrict, including its**]** formation**, consolidation, expansion, disestablishment or eminent domain activities of the watershed district**. They shall organize as a single board for such purposes and shall designate the chairman, vice chairman, and secretary-treasurer to serve for terms of one year. **[**After organizing, they may continue to meet as a single board for purposes of governing the subdistrict or they may meet as individual county boards and act, individually, on the minutes of meetings of the trustees of the subdistrict, as specified in section 278.240**]**. A **[**subdistrict**] watershed district** which lies in more than one soil and water conservation district shall be formed in the same manner and shall have the same powers and duties as a **[**subdistrict**] watershed district** formed in one soil and water conservation district.

2. Following the entry in the official minutes of the board or boards of soil and water district supervisors of the creation of the **[**subdistrict**] watershed district**, the soil and water supervisors shall certify this fact on a separate form, authentic copies of which shall be recorded with the recorder of deeds of each county in which any portion of the **[**subdistrict**] watershed district** lies, and with the state soil and water districts commission.

278.240. DISTRICT BOARD OF SUPERVISORS TO GOVERN WATERSHED DISTRICT, COMBINED BOARDS TO GOVERN, WHEN — TRUSTEES OF WATERSHED DISTRICT, HOW ELECTED, TERMS — POWERS OF DIRECTORS — MILEAGE REIMBURSEMENT AUTHORIZED. — 1. The board of soil and water conservation district supervisors of **the** soil and water conservation district in which the **[**subdistrict**] watershed district** is formed shall **[**be the governing body of the subdistrict**] act in an advisory capacity to the watershed district board**. When a **[**subdistrict**] watershed district** lies in more than one soil and water conservation district, the combined boards of soil and water conservation district supervisors shall **[**be the governing body**] act in an advisory capacity to the watershed district board**.

2. Five **[**persons**] landowners** living within the **[**subdistrict**] watershed district** shall be elected to serve as trustees of the **[**subdistrict**] watershed district**. The trustees shall be elected by a **[**majority**]** vote of **[**all**]** landowners participating in the referendum for the establishment of the **[**subdistrict**] watershed district**, but the date of the election shall not fall upon the date of any regular political election held in the county. The ballot submitting the proposition to form the **[**subdistrict**] watershed district** shall be so worded as to clearly state that a tax, not to exceed forty cents on one hundred dollars valuation of all real estate within the **[**subdistrict, will**] watershed district, may** be authorized if the **[**subdistrict**] watershed district** is formed. In **[**subdistricts**] watershed districts** formed after September 28, 1977, two trustees shall be elected for a term of six years, two shall be elected for a term of four years, and one shall be elected for a term of two years. Their successors shall be elected for terms of six years. In any district in existence on September 28, 1977, the three trustees holding office shall continue as trustees. At the next scheduled election within the **[**subdistrict**] watershed district**, two additional trustees shall be elected. One of the additional trustees shall be elected for a term of four years and one shall be elected for a term of six years. Each successor shall be elected for a term of six years. **In case of the death, loss of landowner standing within the watershed district, or resignation from office of any elected watershed district trustee, his or her successor to the unexpired term shall be appointed by the trustees of that watershed district. A trustee may succeed himself or herself by reelection in this office.** The trustees shall elect one of their members as chairman and one of their members as secretary to serve for terms of two years.

3. [If the governing board so designates**]** The trustees **[**may**] shall** act in all matters pertaining to the **[**subdistrict**] watershed district**, except those concerning formation, consolidation, expansion or disestablishment of the **[**subdistrict**] watershed district**. **[**All official actions taken by the trustees, however, shall be subject to the ratification of a majority of the governing boards of the individual soil and water conservation districts from which the subdistrict was formed. No actions taken by the trustees shall become effective until ratification of a majority of the governing boards has taken place. At the next regular meeting following any meeting of the trustees, each governing board may place on their agenda for approval or disapproval the actions taken by the trustees. Failure to take action by any board shall be construed as disapproval of all actions taken by the trustees. It shall be the responsibility of the secretary of the trustees to see that each governing board has a copy of the minutes of each meeting held by the trustees at least two days prior to the next regular meetings of these boards. If the governing board shall decide to continue meeting as a single board for purposes of governing the subdistrict, the trustees shall serve as an advisory body only. The trustees shall be reimbursed for mileage expense incurred in the attendance of meetings of the governing body of the subdistrict and shall also be reimbursed for mileage expense incurred in the attendance of meetings of their own members. One trustee per meeting may be reimbursed for mileage

expense incurred in the attendance of meetings of the governing boards of the individual soil and water conservation districts from which the subdistrict was formed.**]** **It shall be the responsibility of the secretary of the trustees to see that each soil and water district board included in the watershed district is provided a copy of the minutes of each meeting held by the trustees. The trustees shall be reimbursed for expenses incurred relating to the business of the watershed district.**

278.245. CONDEMNATION AUTHORIZED, WHEN — OTHER POWERS OF GOVERNING BODY OR TRUSTEES — TAXATION AUTHORIZED. — **[**The governing body of the subdistrict or the trustees of the subdistrict, when acting with the approval of the governing body as provided in section 278.240, shall have, in addition to other authority granted in other sections of this law, the following authority in governing subdistricts**] The trustees of the watershed district shall have the following authority**:

(1) To acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, or through condemnation proceedings **[**in the manner provided in**] pursuant to** chapter 523, RSMo, such lands, easements, or rights-of-way as are needed to carry out any authorized purpose of the **[**subdistrict**] watershed district**; provided that notwithstanding any provision of law to the contrary, the power of eminent domain shall not be exercised**:**

(a) Over the protest of any landowner until it is established that acquisition of the land proposed to be condemned is necessary for the purposes of the **[**subdistrict**] watershed district**; and to sell, lease or otherwise dispose of any of its property or interest therein **[**in furtherance of the purposes and provisions of**] pursuant to** sections 278.160 to 278.300; **and**

(b) Unless four trustees vote in favor of the use of such power in such case. Following approval by the trustees, a majority vote of the soil and water supervisors of all the districts included in such watershed district shall also be required prior to any use of the power of eminent domain;

(2) To construct, repair, enlarge, improve, operate, and maintain such works of improvement as may be necessary for the performance of any of the operations authorized by sections 278.160 to 278.300;

(3) To borrow money and to execute promissory notes and other evidences of debt in connection therewith for payment of the costs and expenses or for carrying out any authorized purpose of such **[**subdistrict**] watershed district**, and if promissory notes are issued, to execute such mortgages on any property owned by such district, or assign or pledge such revenues or assessments of such **[**subdistrict**] watershed district** as may be required by the lender as security for the repayment of the loan; and to issue, negotiate, and sell its bonds **[**as provided in**] pursuant to** section 278.280;

(4) To levy an annual tax and organization tax on the real property within the **[**subdistrict**] watershed district** subject to the limitations provided in section 278.250 for payment of the costs for carrying out any authorized purpose of such **[**subdistrict**] watershed district**;

(5) To make assessments on the real property within the **[**subdistrict**] watershed district** for special benefits to such real property accruing as a result of the construction of any works of improvement by the **[**subdistrict**] watershed district**.

278.250. ORGANIZATION TAX — ANNUAL TAX FOR WATERSHED DISTRICT — LIMITATION — LEVY — COLLECTION — LIEN ENFORCEMENT — RATE OF TAX — PROPERTY TAX (SECTION 137.073) RATE IF NO LEVY IMPOSED FOR YEAR. — 1. In order to facilitate the preliminary work of the **[**subdistrict the governing body of the subdistrict or**] watershed district,** the trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in section 278.240**] watershed district**, may levy an organization tax **[**of**]** not to exceed forty cents per one hundred dollars of assessed valuation of all real estate within the **[**subdistrict**] watershed district**, the proceeds of which may be used for organization and administration expenses of the **[**subdistrict,**] watershed district** the acquisition of real and

personal property, including easements for rights-of-way, necessary to carry out the purposes of the **[**subdistrict**] watershed district**. This levy may be made one time only. The organization tax may be imposed **[**as provided for in**] pursuant to** subsections 4 and 5 of this section.

2. After the **[**governing body or**]** the trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in section 278.240,**] watershed district** have obtained agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than sixty-five percent of the lands situated in the **[**subdistrict**] watershed district**, an annual tax may be imposed for construction, repair, alteration, maintenance and operation of the present and future works of improvement within the boundaries of the **[**subdistrict**] watershed district** in order to participate in funds from federal sources appropriated for watershed protection and flood prevention. The annual tax may be imposed as provided for in subsections 4 and 5 of this section.

3. Within the first quarter of each calendar year, the trustees for the **[**subdistrict**] watershed district** shall prepare an itemized budget of the funds needed for administration of the **[**subdistrict**] watershed district** and for construction, operation and maintenance of works of improvement for the ensuing fiscal year. The budget shall be subject to the approval of the **[**governing body of the subdistrict as provided in**] watershed district trustees pursuant to** section 278.240.

4. The **[**governing body or**]** the trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in section 278.240,**] watershed district, pursuant to section 278.240,** shall make the necessary levy on the assessed valuation of all real estate within the boundaries of the **[**subdistrict**] watershed district** to raise the needed amounts, but in no event shall the levy exceed forty cents on each one hundred dollars of assessed valuation per annum and, on or before the first day of September of each year, shall certify the rate of levy to the county commission of the county or counties within which the **[**subdistrict**] watershed district** is located with directions that at the time and in the same manner required by law for the levy of taxes for county purposes the county commission shall levy a tax at the rate so fixed and determined upon the assessed valuation of all real estate within the **[**subdistrict**] watershed district**, in addition to such other taxes as are levied by the county commission.

5. The body having authority to levy taxes within the county shall levy the taxes provided in this law, and all officials charged with the duty of collecting taxes shall collect the taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected; computation shall be made on the regular tax bills, and when collected shall pay the same to the **[**subdistrict**] watershed district** ordering its levy and collection or entitled to the same, and the payment of such collections shall be made monthly to the treasurer of the **[**subdistrict**] watershed district**. The proceeds shall be kept in a separate account by the treasurer of the **[**subdistrict**] watershed district** and identified by the official name of the **[**subdistrict**] watershed district** in which the levy was made. Expenditures from the fund shall be made on requisition of the chairman and secretary of the **[**governing body of the subdistrict or, alternately, on requisition of the chairman of the governing body of the subdistrict and the chairman of the trustees of the subdistrict**] watershed district board of trustees**.

6. All taxes levied under this law, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall, until paid, constitute a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of general taxes, and no sale of such property to enforce any general tax or other lien shall extinguish the perpetual lien of **[**subdistrict**] watershed district** taxes.

7. If the taxes levied are not paid as provided in this section, then the delinquent real property shall be sold at the regular tax sale for the payment of the taxes, interest and penalties, in the manner provided by the statutes of the state of Missouri for selling property for the nonpayment of general taxes. If there are no bids at the tax sale for the property so offered, the property shall be struck off to the county or other agency provided by law, and the county or

agency shall account to the district in the same manner as provided by law for accounting for school, town, and city taxes.

8. For purposes of section 22 of article X of the Constitution of Missouri, the tax authorized in the ballot submitting the proposition to form the **[**subdistrict**] watershed district** under section 278.240, if approved by a majority of the voters on or prior to November 4, 1980, shall be deemed the current levy authorized by law on November 4, 1980, if on that date a levy was not actually imposed or was imposed in a lesser amount. This tax shall also be considered as the 1984 tax for purposes of section 137.073, RSMo, in the event no levy was imposed by the **[**subdistrict**] watershed district** for that year.

278.280. PROJECTS, HOW FINANCED — SPECIAL ASSESSMENT APPRAISERS, DUTIES, COMPENSATION — ASSESSMENT RESOLUTION, HEARINGS — ELECTION — BONDS — SPECIAL LEVY. — 1. When a plan of work is approved the **[**governing body or**]** the trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in**] watershed district, pursuant to** section 278.240, shall then by resolution propose that the cost of all works of improvement contemplated in the plan be paid either by a general levy against all real estate in the **[**subdistrict**] watershed district**, subject to the limitations of section 278.250, or that such cost be paid by special assessment against lands within the **[**subdistrict**] watershed district** to be benefited by the installation of the proposed works of improvement, or that such cost be paid by both such general levy and special assessment stating the portion to be paid by each method.

2. If the resolution of financing provides that all or any part of the cost of the works of improvement is to be paid by special assessment of benefits **[**the governing body or**]** the trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in**] watershed district, pursuant to** section 278.240, shall appoint three appraisers, who shall be residents of the state of Missouri, and who shall not be landowners in such **[**subdistrict**] watershed district**, who shall recommend apportionment of the special assessment to the tracts of land which will receive benefits from the installation of the works of improvement proposed in the plan of work. The appraisers shall have access to all available engineering reports and data pertaining to the works contemplated and may request additional legal counsel or engineering data from a registered professional engineer as found necessary to carry out their duties.

3. The appraisers shall proceed to view the premises and determine the value of all land or other property within or without the **[**subdistrict**] watershed district**, to be acquired and used for rights-of-way or other works set out in the plan of work; they shall assess the amount of benefits, and the amount of damage if any, that will accrue to each governmental lot, forty-acre tract or other subdivision of land according to ownership, railroad and other rights-of-way, railroad roadways, and other property from carrying out and putting into effect the plan of work heretofore adopted, and shall make written reports of their findings to the **[**governing board of the subdistrict**] trustees of the watershed district**. Each appraiser so appointed shall be paid **[**fifteen dollars per day**]** for his **or her** services and necessary expenses **[**in addition thereto**]**.

4. Upon receiving the report from the appraisers, **[**the governing body or**]** the trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in**] watershed district, pursuant to** section 278.240, shall prepare a resolution which shall contain a list of the tracts of land found to be benefited and the amount of assessment to be levied against each such tract, except that no such assessment against any tract of land shall exceed the estimated benefits to such land by such project. Such tracts of land shall be legally described and the names of the owners thereof shall be set forth beside the description of each tract so listed. After adopting such resolution **[**the governing body or**]** the trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in**] watershed district, pursuant to** section 278.240, shall fix a time and place for hearing any complaint that may be made as to the benefit to any tract of land appraised, notice of which hearing shall be given by the secretary by publication **[**as in**] pursuant to** section 278.190. The board **or trustees** at the hearing may alter the benefits to any tract if, in its judgment, the same has been appraised too high or too low. The

hearing shall be conducted in the manner set forth in section 278.200. The **[**governing body or the**]** trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in**] watershed district, pursuant to** section 278.240, shall immediately after the hearing pass a resolution fixing the benefit assessment as to each tract of land.

5. After the resolution fixing the benefit assessment has been adopted **[**the governing body or**]** the trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in**] watershed district, pursuant to** section 278.240, shall submit the proposal for collection of such assessed benefits to the owners of the lands so assessed for approval and if bonds are to be issued the amount of the issue so proposed, the rate of interest, and the amount of any necessary tax levy in excess of the amount authorized in section 278.250. If two-thirds of the owners of such lands voting favor the proposal as submitted, it shall be adopted. The provisions of sections 278.190 to 278.210 as to notice and procedure shall apply to the referendum held **[**under**] pursuant to** this section.

6. The **[**governing body or the**]** trustees of the **[**subdistrict, when acting with the approval of the governing body as provided in**] watershed district, pursuant to** section 278.240, shall make the necessary general levy against all real estate in the **[**subdistrict**] watershed district** and the special assessment against lands within the **[**subdistrict**] watershed district** to be benefited by the improvement and shall certify the rate of levy and the amount of the special assessment to the county commission of the county or counties in which the **[**subdistrict**] watershed district** is located with directions that at the time and in the same manner required by law for the levy of taxes for county purposes the county commission shall levy a tax at the rate so fixed and determined upon the assessed valuation of all real estate within the **[**subdistrict**] watershed district** and shall levy the amount of the special assessment, in addition to such other taxes as are levied by the county commission.

7. The bond issue, authorized by this section in whole or part, may be offered for sale to the **[**Farmers Home Administration**] United States Department of Agriculture's Rural Development** or other federal agency without public offering or the securing of competitive bids on such bond offering.

278.290. DISESTABLISHMENT OF WATERSHED DISTRICT, PROCEDURE. — 1. After a **[**subdistrict**] watershed district** has been organized for more than five years and **[**said subdistrict**] that watershed district** does not have any outstanding bonds, has not constructed or contracted to construct any works of improvement, nor incurred any continuing obligations for maintenance and operation of any works of improvement or if any works of improvement have been constructed, if there are no bonds outstanding, and an agency of the United States government or the state of Missouri or a county or municipal corporation of this state has made arrangements satisfactory to the Secretary of Agriculture and the state soil and water districts commission to assume responsibility for operating and maintaining such improvement, not less than fifty percent of the landowners of the **[**subdistrict**] watershed district** may petition the governing body of the **[**subdistrict**] watershed district** to call for and conduct a referendum upon the disestablishment of the **[**subdistrict**] watershed district**. If sixty-five percent of the landowners voting in referendum do vote in favor of the disestablishment of the **[**subdistrict**] watershed district**, the **[**governing body**] watershed district board** shall declare the **[**subdistrict**] watershed district** to be disestablished; however, prior to any such declaration the **[**governing body**] watershed district board** shall pay or make arrangements to pay any outstanding indebtedness. The provisions of sections 278.190, 278.200 and 278.210 as to notice, qualification of voters and manner of holding the referendum in organizing a **[**subdistrict**] watershed district** to the extent practicable shall apply to the referendum held **[**under**] pursuant to** this section.

2. Following the entry in the official minutes of the board or boards of **[**soil and water conservation**] watershed** district supervisors of the disestablishment of the **[**subdistrict**]**

watershed district, the **[**soil and water conservation**]** **watershed** district supervisors shall certify this fact on a separate form, authentic copies of which shall be recorded with the recorder of deeds of each county in which any portion of the **[**subdistrict**]** **watershed district** lies, and with the state soil and water districts commission.

3. Whenever a **[**subdistrict**]** **watershed district** is declared to be disestablished, the respective boards of supervisors of the soil and water conservation districts in which the **[**subdistrict**]** **watershed district** was formed shall take charge of all property and funds of the **[**subdistrict**]** **watershed district**. After all property has been sold and the obligations of the **[**subdistrict**]** **watershed district** are met, any remaining funds shall be turned over to the county commissions of the respective counties.

278.300. STATE SOIL AND WATER DISTRICTS COMMISSION TO CONTROL WATERSHED DISTRICTS FORMERLY UNDER A DISESTABLISHED SOIL AND WATER CONSERVATION DISTRICT. — If a soil and water conservation district is disestablished **[**as provided by**]** **pursuant to** section 278.150, the state soil and water districts commission shall **[**become the governing body of any subdistrict**]** **have the same responsibilities as the soil and water conservation district with respect to formation, consolidation and disestablishment of any watershed district** or portion thereof, organized within the boundaries of such soil and water conservation districts **[**and shall be entitled to all benefits and powers heretofore granted to such governing body by sections 278.160 to 278.300, including the levy and collection of taxes**]**. **In all other matters after a district is disestablished, the commission shall act in an advisory capacity to the watershed district board in lieu of the soil and water district board.**

322.010. DEFINITIONS. — For the purpose of sections 322.010 to **[**322.080**]** **322.145**, the following words and following phrases shall be considered and held to mean the following:

(1) "Affected with rabies" **[**shall mean when manifesting the principal characteristic symptoms of rabies as described in the standard textbooks treating upon the diseases of domestic animals**]**, infected with the rabies virus as determined by standard laboratory testing;

(2) "Exposed to rabies" **[**shall mean**],** when bitten by, or fought with, or has come in close contact with a dog **[**showing symptoms of rabies**]** **or other animal shown to be infected with the rabies virus as determined by standard laboratory testing**;

(3) "Immunized" **[**shall mean**],** immunized against rabies at the expense of the owner or custodian by the administration of antirabic virus by a licensed veterinarian; **[**and**]**

(4) "Rabies" **[**shall mean**],** hydrophobia**; and**

(5) "Zoonotic disease", a dangerous disease communicable from animals to humans as determined by the department of health.

322.140. ANIMAL BITE, REPORT TO COUNTY HEALTH DEPARTMENT IN ABSENCE OF COUNTY RULES — INVESTIGATION OF REPORT — RESPONSIBILITY OF OWNER — RULEMAKING AUTHORITY. — 1. If a county does not adopt rules and regulations pursuant to sections 322.090 to 322.130, whenever an animal bites or otherwise possibly transmits rabies or any zoonotic disease, the incident shall be immediately reported to the county health department. The county health department shall immediately report the incident to the department of health and shall cooperate fully with the department of health in its investigation.

2. Upon receipt of an incident report where an animal bites or otherwise possibly transmits rabies or any zoonotic disease, the department of health shall investigate the incident and shall have discretion to order the animal quarantined, isolated, impounded, tested, immunized or disposed of to prevent and control rabies or zoonotic disease.

3. With regard to exposure to rabies or zoonotic disease the department of health shall, in its investigation and issuance of its order, consider the following:

(1) Prior vaccinations for rabies or zoonotic disease;

(2) The degree of exposure to rabies or zoonotic disease;

(3) The history and prior behavior of the animal prior to exposure;

(4) The availability and effectiveness of human post- exposure immunization for rabies or zoonotic disease;

(5) The willingness of the individual so exposed to submit to post-exposure immunization for rabies or zoonotic disease; and

(6) Any other relevant information.

4. It shall be unlawful for the owner of an animal that bites or otherwise possibly transmits rabies or any zoonotic disease to knowingly fail or refuse to comply with a lawful order of the department of health declaring a quarantine, isolation, impounding, testing, immunization or disposal of an animal. It shall also be unlawful for an owner of an animal that bites or otherwise possibly transmits rabies or any zoonotic disease to sell, give away, transfer, transport to another area or otherwise dispose of an animal until the animal has been released by the department of health. A violation of this subsection shall be a class A misdemeanor.

5. The owner of an animal that bites or otherwise possibly transmits rabies or any zoonotic disease shall be responsible for all costs associated with the incident, including:

(1) The cost to test the animal for rabies or zoonotic disease;

(2) The cost to test the exposed person for rabies or zoonotic disease; and

(3) The cost to treat the person exposed to rabies or zoonotic disease.

6. The department of health shall have authority to promulgate rules and regulations concerning the classification of disease as a zoonotic disease. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

322.145. LIABILITY OF OWNER FOR ANIMAL BITE. — The owner of an animal that bites or otherwise possibly transmitted rabies or any zoonotic disease shall be liable to an injured party for all damages done by the animal.

340.335. LOAN REPAYMENT PROGRAM FOR VETERINARY GRADUATES — FUND CREATED. — 1. Sections 340.335 to 340.350 establish a loan repayment program for graduates of approved veterinary medical schools who practice in areas of defined need and shall be known as the "Large Animal Veterinary Medicine Loan Repayment Program".

2. The "Large Animal Veterinary Medicine Loan Repayment Program Fund" is hereby created in the state treasury. All funds recovered from an individual pursuant to section 340.347 and all funds generated by loan repayments and penalties received pursuant to section 340.347 shall be credited to the fund. The moneys in the fund shall be used by the Missouri veterinary medical board to provide loan repayments pursuant to section 340.343 in accordance with sections 340.335 to 340.350.

340.337. DEFINITIONS. — As used in sections 340.335 to 340.350, the following terms shall mean:

(1) "Areas of defined need", areas designated by the board pursuant to section 340.339, when services of a large animal veterinarian are needed to improve the client-doctor ratio in the area, or to contribute professional veterinary services to an area of economic impact;

(2) "Board", the Missouri veterinary medical board;

(3) "Large animal veterinarian", veterinarians licensed and registered pursuant to this chapter, engaged in general or large animal practice as their primary specialties, and who have at least fifty percent of their practice devoted to large animal veterinary medicine.

340.339. CERTAIN AREAS DESIGNATED AS AREAS OF DEFINED NEED BY BOARD BY RULE. — The board shall designate counties, communities or sections of rural areas as areas of defined need as determined by the board by rule.

340.341. ELIGIBILITY STANDARDS FOR LOAN REPAYMENT PROGRAM — RULEMAKING AUTHORITY. — 1. The board shall adopt and promulgate rules establishing standards for determining eligible persons for loan repayment pursuant to sections 340.335 to 340.350. Such standards shall include, but are not limited to the following:

(1) Citizenship or permanent residency in the United States;

(2) Residence in the state of Missouri;

(3) Enrollment as a full-time veterinary medical student in the final year of a course of study offered by an approved educational institution in Missouri;

(4) Application for loan repayment.

2. The board shall not grant repayment for more than five veterinarians each year.

340.343. CONTRACT FOR LOAN REPAYMENT, CONTENTS — SPECIFIC PRACTICE SITES MAY BE STIPULATED. — 1. The board shall enter into a contract with each individual qualifying for repayment of educational loans. The written contract between the board and an individual shall contain, but not be limited to, the following:

(1) An agreement that the state agrees to pay on behalf of the individual, loans in accordance with section 340.345 and the individual agrees to serve for a time period equal to five years, or such longer period as the individual may agree to, in an area of defined need, such service period to begin within one year of the signed contract or graduation by the individual with a degree of doctor of veterinary medicine, whichever is later;

(2) A provision that any financial obligations arising out of a contract entered into and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments;

(3) The area of defined need where the person will practice;

(4) A statement of the damages to which the state is entitled for the individual's breach of the contract;

(5) Such other statements of the rights and liabilities of the board and of the individual not inconsistent with sections 340.335 to 340.350.

2. The board may stipulate specific practice sites contingent upon board generated large animal veterinarian need priorities where applicants shall agree to practice for the duration of their participation in the program.

340.345. LOAN REPAYMENT TO INCLUDE PRINCIPAL, INTEREST AND RELATED EXPENSES — ANNUAL LIMIT. — 1. A loan payment provided for an individual pursuant to a written contract under the large animal veterinary medicine loan repayment program shall consist of payment on behalf of the individual of the principal, interest and related expenses on government and commercial loans received by the individual for tuition, fees, books, laboratory and living expenses incurred by the individual.

2. For each year of obligated services that an individual contracts to serve in an area of defined need, the board may pay up to ten thousand dollars on behalf of the individual for loans described in subsection 1 of this section.

3. The board may enter into an agreement with the holder of the loans for which repayments are made under the large animal veterinary medicine loan repayment

program to establish a schedule for the making of such payments if the establishment of such a schedule would result in reducing the costs to the state.

4. Any qualifying communities providing a portion of a loan repayment shall be considered first for placement.

340.347. LIABILITY FOR AMOUNTS PAID BY PROGRAM, WHEN — BREACH OF CONTRACT, AMOUNT OWED TO STATE. — 1. An individual who has entered into a written contract with the board or an individual who is enrolled in a course of study and fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study or fails to become licensed pursuant to this chapter within one year after graduation shall be liable to the state for the amount which has been paid on such individual's behalf pursuant to the contract.

2. If an individual breaches the written contract of the individual by failing either to begin such individual's service obligation or to complete such service obligation, the state shall be entitled to recover from the individual an amount equal to the sum of:

(1) The total of the amounts paid by the state on behalf of the individual, including interest; and

(2) An amount equal to the unserved obligation penalty, which is the total number of months of obligated service which were not completed by an individual, multiplied by five hundred dollars.

3. The board may act on behalf of a qualified community to recover from an individual described in subsections 1 and 2 of this section the portion of a loan repayment paid by such community for such individual.

340.350. RULEMAKING AUTHORITY. — No rule or portion of a rule promulgated pursuant to the authority of sections 340.335 to 340.350 shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.

348.432. NEW GENERATION COOPERATIVE INCENTIVE TAX CREDIT — DEFINITIONS — REQUIREMENTS — LIMITATIONS. — 1. The tax credit created in this section shall be known as the "New Generation Cooperative Incentive Tax Credit".

2. As used in this section, the following terms mean:

(1) "Authority", the agriculture and small business development authority as provided in this chapter;

(2) "Development facility", a facility producing either a good derived from an agricultural commodity or using a process to produce a good derived from an agricultural product;

(3) "Eligible new generation cooperative", a nonprofit cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility and approved by the authority;

(4) **"Employee qualified capital project", an eligible new generation cooperative with capital costs greater than fifteen million dollars which will employ at least one hundred employees;**

(5) "Large capital project", an eligible new generation cooperative with capital costs greater than one million dollars;

(6) "Member", a person, partnership, corporation, trust or limited liability company that invests cash funds to an eligible new generation cooperative;

[(5)**] (7)** "Renewable fuel production facility", a facility producing an energy source which is derived from a renewable, domestically grown, organic compound capable of powering machinery, including an engine or power plant, and any by-product derived from such energy source**;**

(8) "Small capital project", an eligible new generation cooperative with capital costs of no more than one million dollars.

3. Beginning tax year 1999, and subsequent tax years, any member who invests cash funds in an eligible new generation cooperative may receive a credit against the tax otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant to sections 143.191 to 143.265, RSMo, or chapter 148, RSMo, chapter 147, RSMo, in an amount equal to the lesser of fifty percent of such member's investment or fifteen thousand dollars.

4. A member shall submit to the authority an application for the tax credit authorized by this section on a form provided by the authority. If the member meets all criteria prescribed by this section and is approved by the authority, the authority shall issue a tax credit certificate in the appropriate amount. Tax credits issued pursuant to this section shall initially be claimed for the taxable year in which the member contributes capital to an eligible new generation cooperative. Any amount of credit that exceeds the tax due for a member's taxable year may be carried back to any of the member's three prior taxable years and carried forward to any of the member's five subsequent taxable years. Tax credits issued pursuant to this section may be assigned, transferred **[**or**],** sold **or otherwise conveyed and the new owner of the tax credit shall have the same rights in the credit as the member**. Whenever a certificate of tax credit is assigned, transferred, sold or otherwise conveyed, a notarized endorsement shall be filed with the authority specifying the name and address of the new owner of the tax credit or the value of the credit.

5. **[**At least**]** Ten percent of the tax credits authorized pursuant to this section **initially** shall be offered in any fiscal year to **small capital** projects **[**with capital costs of no more than one million dollars**]**. If **[**the amount of tax credits allowed pursuant to this section exceeds the amount needed for such smaller projects, the remaining**] any portion of the ten percent of tax credits offered to small capital costs projects is unused in any calendar year, then the unused portion of** tax credits may be offered **[**for projects with capital costs in excess of one million dollars**] to employee qualified capital projects and large capital projects**. **If the authority receives more applications for tax credits for small capital projects than tax credits are authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for small capital projects.**

6. **[**If members of a project would be eligible for tax credits in excess of one million five hundred thousand dollars, tax credits authorized pursuant to this section shall be prorated between the members on a percent of investment basis, not to exceed the maximum allowed per member.**] Ninety percent of the tax credits authorized pursuant to this section initially shall be offered in any fiscal year to employee qualified capital projects and large capital projects. If any portion of the ninety percent of tax credits offered to employee qualified capital projects and large capital costs projects is unused in any fiscal year, then the unused portion of tax credits may be offered to small capital projects. The maximum tax credit allowed per employee qualified capital project is three million dollars and the maximum tax credit allowed per large capital project is one million five hundred thousand dollars. If authority approves the maximum tax credit allowed for any employee qualified capital project or any large capital project, then the authority, by rule, shall determine the method of distribution of such maximum tax credit. In addition, if the authority receives more tax credit applications for employee qualified capital projects and large capital projects than the amount of tax credits authorized therefor, then the authority, by rule, shall determine the method of distribution of tax credits authorized for employee qualified capital projects and large capital projects.**

407.857. REIMBURSEMENT FOR WARRANTY WORK PERFORMED BY CERTAIN RETAIL SELLERS OF POWER EQUIPMENT. — Retailers who sell and service industrial, maintenance and construction power equipment or outdoor power equipment as defined in section 407.850, and who do warranty repair work for a consumer under provisions of a manufacturer's express warranty, shall be reimbursed by the manufacturer for the

warranty work at an hourly rate that is the same or greater than the hourly labor rate the retailer currently charges consumers for nonwarranty repair work.

409.401. DEFINITIONS. — When used in sections 409.101 to 409.419, unless the context otherwise requires:

(a) "Commissioner" means the commissioner of securities.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents (1) an issuer in (a) effecting transactions in a security exempted by clause (1), (2), (3), (4), (6), (9), (10) or (11) of section 409.402(a), (b) effecting transactions in a security exempted by clause (5) of section 409.402(a), provided such individual prior to the transactions files with the commissioner information on (A) his relationship to the issuer and its affiliates, (B) his proposed methods of soliciting the transactions including sales literature to be used, and (C) commissions and other remuneration he is to receive for effecting the transactions, and such additional information as the commissioner may require, (c) effecting transactions exempted by section 409.402(b), (d) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, (e) effecting transactions in a covered security as described in sections 18(b)(3) and 18(b)(4)(D) of the Securities Act of 1933; (2) a broker-dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934; or (3) effecting transactions with such other persons as the commissioner may by rule or order designate. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, or (4) a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) the person has fewer than five clients in the state of Missouri, or (5) such other persons as the commissioner may by rule or order designate.

(d) "Federal covered adviser" means a person who is (1) registered pursuant to section 203 of the Investment Advisers Act of 1940; or (2) is excluded from the definition of "investment adviser" pursuant to section 202(a)(11) of the Investment Advisers Act of 1940.

(e) "Federal covered security" means any security that is a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder.

(f) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.

(g) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(h) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation; except that "investment adviser" does not include (1) an investment adviser representative; (2) a bank, savings institution, or trust company; (3) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of

his profession; (4) a broker-dealer or his agent whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (5) a publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; (6) any person that is a federal covered adviser; or (7) such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

(i) "Investment adviser representative" means any partner, officer, director or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered pursuant to sections 409.101 to 409.419, or who has a place of business located in this state and is employed by or associated with a federal covered adviser; and who does any of the following: (1) makes any recommendations or otherwise renders advice regarding securities, except that investment adviser representative does not include an individual whose performance of these services is solely incidental to the conduct of his business as an "agent" of a broker-dealer and who receives no special compensation for them, (2) manages accounts or portfolios of clients, (3) determines which recommendation or advice regarding securities should be given, or (4) supervises employees who perform any of the foregoing.

(j) "Issuer" means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production under such titles or leases there is not considered to be any "issuer".

(k) "Non-issuer" means not directly or indirectly for the benefit of the issuer.

(l) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(m) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization

in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(n) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1968.

(o) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; limited partnership interest; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

(p) "State" means any state, territory, or possession of the United States, the District of Columbia and Puerto Rico.

(q) "Cooperative association" means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing and/or furnishing farm supplies and/or farm business services; provided, however, that such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements: (1) no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, and (2) the association does not pay dividends on stock or membership capital in excess of eight percent per year, and in any case to the following: (3) the association does **[**not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members**] at least twenty-five percent of its business with its members**; further, all business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such association.

414.032. REQUIREMENTS, STANDARDS, CERTAIN FUELS — ALCOHOL ADDITIVES AND OXYGENATE BLENDS, NOTICE TO BUYER — DIRECTOR MAY INSPECT FUELS, PURPOSE. — 1. All kerosene, diesel fuel, heating oil, aviation turbine fuel, gasoline, gasoline-alcohol blends and other motor fuels shall meet the requirements in the annual book of ASTM standards and supplements thereto. The director may promulgate rules and regulations on the labeling, standards for, and identity of motor fuels and heating oils.

2. All sellers of motor fuel which has been blended with an alcohol additive shall notify the buyer of same.

3. **All sellers of motor fuel which has been blended with at least one percent oxygenate by weight shall notify the buyer at the pump of the type of oxygenate. The provisions of this subsection may be satisfied with a sticker or label on the pump stating that the motor fuel may or may not contain the oxygenate. The department of agriculture shall provide the sticker or label, which shall be reasonable in size and content, at no cost to the sellers.**

4. The director may inspect gasoline, gasoline-alcohol blends or other motor fuels to insure that these fuels conform to advertised grade and octane. **In no event shall the penalty for a first violation of this section exceed a written reprimand.**

414.433. PURCHASE OF BIODIESEL FUEL BY SCHOOL DISTRICTS — CONTRACTS WITH NEW GENERATION COOPERATIVES — DEFINITIONS — RULEMAKING AUTHORITY. — 1. As used in this section, the following terms mean:

(1) "B-20", a blend of two fuels of twenty percent by volume biodiesel and eighty percent by volume petroleum-based diesel fuel;

(2) "Biodiesel", as defined in ASTM Standard PS121 or its subsequent standard specification for biodiesel fuel (B 100) blend stock for distillate fuels;

(3) "Eligible new generation cooperative", a nonprofit farmer-owned cooperative association formed pursuant to chapter 274, RSMo, or incorporated pursuant to chapter 357, RSMo, for the purpose of operating a development facility or a renewable fuel production facility, as defined in section 348.430, RSMo.

2. Beginning with the 2002-2003 school year and lasting through the 2005-2006 school year, any school district may contract with an eligible new generation cooperative to purchase biodiesel fuel for its buses of a minimum of B-20 under conditions set out in subsection 3 of this section.

3. Every school district that contracts with an eligible new generation cooperative for biodiesel pursuant to subsection 2 of this section shall receive an additional payment through its state transportation aid payment pursuant to section 163.161, RSMo, so that the net price to the contracting district for biodiesel will not exceed the rack price of regular diesel. If there is no incremental cost difference between biodiesel above the rack price of regular diesel, then the state school aid program will not make payment for biodiesel purchased during the period where no incremental cost exists. The payment shall be made based on the incremental cost difference incrementally up to seven-tenths percent of the entitlement authorized by section 163.161, RSMo, for the 1998-1999 school year. The payment amount may be increased by four percent each year during the life of the program. No payment shall be authorized pursuant to this subsection or contract required pursuant to subsection 2 of this section if moneys are not appropriated by the general assembly.

4. The department of elementary and secondary education shall promulgate such rules as are necessary to implement this section, including but not limited to a method of calculating the reimbursement of the contracting school districts and waiver procedures if the amount appropriated does not cover the additional costs for the use of biodiesel. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

537.353. LIABILITY FOR DAMAGE OR DESTRUCTION OF FIELD CROP PRODUCTS, WHEN — COURT COSTS AWARDED, WHEN. — 1. Any person or entity who knowingly damages or destroys any field crop product that is grown for personal or commercial purposes, or for testing or research purposes in the context of a product development program in conjunction or coordination with a private research facility, a university, or any federal, state or local government agency, shall be liable for double damages pursuant to this section.

2. In awarding damages pursuant to this section, the courts shall consider the following:

(1) The market value of the crop prior to damage or destruction; and

(2) The actual damages involving production, research, testing replacement and crop development costs directly related to the crop that has been damaged or destroyed.

3. In addition, the court may award court costs, including reasonable attorneys fees.

578.008. SPREADING DISEASE TO LIVESTOCK, CRIME OF — PENALTY — DEFENSES. — 1. A person commits the crime of spreading disease to livestock or animals if that person purposely spreads any type of contagious, communicable or infectious disease among livestock as defined in section 267.565, RSMo, or other animals.

2. Spreading disease to livestock or animals is a class D felony unless the damage to livestock or animals is ten million dollars or more in which case it is a class B felony.

3. It shall be a defense to the crime of spreading disease to livestock or animals if such spreading is consistent with medically recognized therapeutic procedures.

578.012. ANIMAL ABUSE — PENALTIES. — 1. A person is guilty of animal abuse when a person:

(1) Intentionally or purposely kills an animal in any manner not allowed by or expressly exempted from the provisions of sections 578.005 to 578.023 and 273.030, RSMo;

(2) Purposely or intentionally causes injury or suffering to an animal; or

(3) Having ownership or custody of an animal knowingly fails to provide adequate care or adequate control.

2. Animal abuse is a class A misdemeanor, unless the defendant has previously plead guilty to or has been found guilty of animal abuse or the suffering involved in subdivision (2) of subsection 1 of this section is the result of torture or mutilation, or both, consciously inflicted while the animal was alive, in which case it is a class D felony.

[3. For purposes of this section, "animal" shall be defined as a mammal.**]**

578.023. KEEPER OF DANGEROUS WILD ANIMALS MUST REGISTER ANIMALS, EXCEPTIONS — PENALTY. — 1. No person may keep any lion, tiger, leopard, ocelot, jaguar, cheetah, margay, mountain lion, Canada lynx, bobcat, jaguarundi, hyena, wolf, **bear, nonhuman primate, [**or**]** coyote, **[**or**]** any deadly, dangerous, or poisonous reptile, **or any deadly or dangerous reptile over eight feet long,** in any place other than a properly maintained zoological park, circus, scientific, or educational institution, research laboratory, veterinary hospital, or animal refuge, unless such person has registered such animals with the local law enforcement agency in the county in which the animal is kept.

2. Any person violating the provisions of this section shall be guilty of a class C misdemeanor.

578.029. KNOWINGLY RELEASING AN ANIMAL, CRIME OF — PENALTY. — 1. A person commits the crime of knowingly releasing an animal if that person, acting without the consent of the owner or custodian of an animal, intentionally releases any animal that is lawfully confined for the purpose of companionship or protection of persons or property or for recreation, exhibition or educational purposes.

2. As used in this section "animal" means every living creature, domesticated or wild, but not including Homo sapiens.

3. The provisions of this section shall not apply to a public servant acting in the course of such servant's official duties.

4. Intentionally releasing an animal is a class B misdemeanor except that the second or any subsequent offense is a class D felony.

578.414. THE CROP PROTECTION ACT — DIRECTOR DEFINED. — Sections 578.414 to 578.420 shall be known and may be cited as "The Crop Protection Act". As used in sections 578.414 to 578.420, the term "director" shall mean the director of the department of agriculture.

578.416. PROHIBITED ACTS. — No person shall:

(1) Intentionally cause the loss of any crop;

(2) Damage, vandalize, or steal any property in or on a crop;

(3) Obtain access to a crop by false pretenses for the purpose of performing acts not authorized by the landowner;

(4) Enter or otherwise interfere with a crop with the intent to destroy, alter, duplicate or obtain unauthorized possession of such crop;

(5) Knowingly obtain, by theft or deception, control over a crop for the purpose of depriving the rightful owner of such crop, or for the purpose of destroying such crop;

(6) Enter or remain on land on which a crop is located with the intent to commit an act prohibited by this section.

578.418. VIOLATIONS, PENALTIES — CIVIL ACTIONS, WHEN. — 1. Any person who violates section 578.416:

(1) Shall be guilty of a misdemeanor for each such violation unless the loss or damage to the crop exceeds five hundred dollars in value;

(2) Shall be guilty of a class D felony if the loss or damage to the crop exceeds five hundred dollars in value but does not exceed one thousand dollars in value;

(3) Shall be guilty of a class C felony if the loss or damage to the crop exceeds one thousand dollars in value but does not exceed one hundred thousand dollars in value;

(4) Shall be guilty of a class B felony if the loss or damage to the crop exceeds one hundred thousand dollars in value.

2. Any person who has been damaged by a violation of section 578.416 may have a civil cause of action pursuant to section 537.353, RSMo.

3. Nothing in sections 578.414 to 578.420 shall preclude any owner or operator injured in his or her business or property by a violation of section 578.416 from seeking appropriate relief under any other provision of law or remedy including the issuance of an injunction against any person who violates section 578.416. The owner or operator of the business may petition the court to permanently enjoin such persons from violating sections 578.414 to 578.420 and the court shall provide such relief.

578.420. INVESTIGATION OF ALLEGED VIOLATIONS — RULEMAKING AUTHORITY. — 1. The director shall have the authority to investigate any alleged violation of sections 578.414 to 578.420, along with any other law enforcement agency, and may take any action within the director's authority necessary for the enforcement of sections 578.414 to 578.420. The attorney general, the highway patrol, and other law enforcement officials shall provide assistance required in the conduct of an investigation.

2. The director may promulgate rules and regulations necessary for the enforcement of sections 578.414 to 578.420. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 578.414 to 578.420 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 578.414 to 578.420 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

SECTION 1. LANDOWNERS' RIGHT TO PRIVATE WATER SYSTEMS AND GROUND SOURCE SYSTEMS. — Notwithstanding any law to the contrary, all Missouri landowners retain the right to have, use, and own private water systems and ground source systems anytime and anywhere including land within city limits, unless prohibited by city ordinance, on their own property so long as all applicable rules and regulations established by the Missouri

department of natural resources are satisfied. All Missouri landowners who choose to use their own private water system shall not be forced to purchase water from any other water source system servicing their community.

[272.150. SALTPETER WORKS TO BE FENCED. — The owners and occupiers of saltpeter works within this state shall keep the same enclosed with a good and lawful fence, so as to prevent horses, cattle and other stock that may receive injury thereby from having access thereto.**]**

[272.160. DAMAGES FOR FAILURE TO FENCE. — Every person, owner or occupier of any saltpeter works within this state, failing to secure the same, with a good and lawful fence, from horses, cattle and any kind of stock that may be injured by drinking the saltpeter water, shall be liable to an action by the party injured by such neglect for double the value of such horses, cattle or other stock injured or killed by drinking such water, to be recovered in any court having competent jurisdiction to try the same.**]**

[272.170. COTTON GINS TO BE ENCLOSED. — Hereafter all persons owning or running cotton gins in the state of Missouri shall keep them enclosed with a sufficient fence to keep out hogs.**]**

[272.180. COTTON SEED NOT TO BE SCATTERED OUTSIDE OF ENCLOSURE. — They shall not allow the cotton seed from their gin to be scattered or thrown outside of the enclosure.**]**

[272.190. PENALTY FOR VIOLATION. — Any person violating the provisions of sections 272.170 and 272.180 shall be liable for all damage accruing therefrom.**]**

[272.200. LANDS UPON WHICH POISONOUS CROPS ARE PLANTED SHALL BE ENCLOSED — PENALTY. — All lands, within this state, upon which sorghum or other poisonous crops are planted shall be enclosed by the owners and occupiers with a good and lawful fence so as to prevent horses, cattle or other stock that may receive injury thereby from having access thereto; provided, that a lawful fence as used in this section shall be construed to mean such fences as are described elsewhere in this chapter and that the same penalties for damages as provided in section 272.160 shall be recoverable under this section; provided further, that this law shall not apply to counties and townships that have or may hereafter adopt a stock law.**]**

SECTION B. EMERGENCY CLAUSE. — Because immediate action is necessary to promote investment in agricultural cooperatives the repeal and reenactment of section 348.432 of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 348.432 of this act shall be in full force and effect upon its passage and approval.

Approved June 28, 2001

SB 470 [SB 470]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Creates the Second State Capitol Commission.

AN ACT to amend chapter 8, RSMo, by adding thereto three new sections relating to the second state capitol commission.

SECTION
A. Enacting clause.
8.001. Second state capitol commission established.
8.003. Membership of commission, terms, meetings, annual report.
8.007. Duties of the commission — second capitol commission fund created.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Chapter 8, RSMo, is amended by adding thereto three new sections, to be known as sections 8.001, 8.003 and 8.007, to read as follows:

8.001. SECOND STATE CAPITOL COMMISSION ESTABLISHED. — The general assembly, recognizing the work of the original state capitol commission board established March 24, 1911, and the work of the capitol decoration commission established April 10, 1917, and seeking to assure the future preservation and integrity of the capitol and to preserve the historical significance of the capitol hereby establishes the second state capitol commission.

8.003. MEMBERSHIP OF COMMISSION, TERMS, MEETINGS, ANNUAL REPORT. — 1. The commission shall consist of eleven persons, as follows: the commissioner of the office of administration; one member of the senate from the majority party and one member of the senate from the minority party; one member of the house of representatives from the majority party and one member of the house of representatives from the minority party; one employee of the house of representatives appointed by the speaker of the house of representatives and one employee of the senate appointed by the president pro tempore; and four members appointed by the governor with the advice and consent of the senate. The lieutenant governor shall be an ex officio member of the commission.

2. The legislative members of the commission shall serve for the general assembly during which they are appointed and until their successors are selected and qualified.

3. The four members appointed by the governor shall be persons who have knowledge and background regarding the history of the state, the history and significance of the seat of state government and the capitol but shall not be required to be professionals in the subject area.

4. The terms of the four members appointed by the governor shall be four years and until their successors are appointed and qualified. Provided, however, that the first term of three public members shall be for two years, thereafter the terms shall be four years. There is no limitation on the number of terms any appointed member may serve. If a vacancy occurs the governor may appoint a member for the remaining portion of the unexpired term created by the vacancy. The governor may remove any appointed member for cause. The members of the commission shall be reimbursed for travel and other expenses actually and necessarily incurred in the performance of their duties by the office of administration.

5. At the first meeting of the commission and at yearly intervals thereafter, the members shall select from among themselves a chairman and a vice chairman.

6. The commission shall hold at least four regular meetings each year and such additional meetings as the chairman deems desirable at a place and time to be fixed by the chairman. Special meetings may be called by five members of the commission upon delivery of written notice to each member of the commission. Reasonable written notice of all meetings shall be given by the director to all members of the commission. Five members of the commission shall constitute a quorum. All actions of the commission shall be taken at meetings open to the public. Any member absent from six consecutive regular commission meetings for any cause whatsoever shall be deemed to have resigned and the vacancy shall be filled immediately in accordance with subsection 1 of this section.

7. The commission shall provide a report to the governor and the general assembly annually.

8.007. DUTIES OF THE COMMISSION — SECOND CAPITOL COMMISSION FUND CREATED. — 1. The commission shall:

(1) Exercise general supervision of the administration of sections 8.001 to 8.007;

(2) Evaluate and recommend courses of action on the restoration and preservation of the capitol, the preservation of historical significance of the capitol and the history of the capitol;

(3) Evaluate and recommend courses of action to ensure accessibility to the capitol for physically disabled persons;

(4) Advise, consult, and cooperate with the office of administration, the archives division of the office of the secretary of state, the historic preservation program within the department of natural resources, the division of tourism within the department of economic development and the Historical Society of Missouri in furtherance of the purposes of sections 8.001 to 8.007;

(5) Be authorized to cooperate or collaborate with other state agencies and not-for-profit organizations to publish books and manuals concerning the history of the capitol, its improvement or restoration;

(6) Before each September 1, recommend options to the governor on budget allocation for improvements or restoration of the capitol premises;

(7) Encourage, participate in, or conduct studies, investigations, and research and demonstrations relating to improvement and restoration of the state capitol it may deem advisable and necessary for the discharge of its duties pursuant to sections 8.001 to 8.007; and

(8) Hold hearings, issue notices of hearings and take testimony as the commission deems necessary.

2. The "Second Capital Commission Fund" is hereby created in the state treasury. Any moneys received from sources other than appropriation by the general assembly, including from private sources, gifts, donations and grants, shall be credited to the second capital commission fund and shall be appropriated by the general assembly.

3. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the second capitol commission fund shall not be transferred and placed to the credit of the general revenue fund.

4. The commission is authorized to accept all gifts, bequests and donations from any source whatsoever. The commission may also apply for and receive grants consistent with the purposes of sections 8.001 to 8.007. All such gifts, bequests, donations and grants shall be used or expended upon appropriation in accordance with their terms or stipulations, and the gifts, bequests, donations or grants may be used or expended for the preservation, restoration and improved accessibility and for promoting the historical significance of the capitol.

Approved July 13, 2001

SB 500 [SB 500]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Revises certain job training programs.

AN ACT to repeal sections 178.892, 620.470 and 620.474, RSMo 2000, relating to job training, and to enact in lieu thereof three new sections relating to the same subject.

SECTION
A. Enacting clause.
178.892. Definitions.
620.470. Definitions.
620.474. Basic industry retraining program, purpose, funding — qualified industries — rules and regulations, factors to be considered.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 178.892, 620.470 and 620.474, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 178.892, 620.470 and 620.474, to read as follows:

178.892. DEFINITIONS. — As used in sections 178.892 to 178.896, the following terms mean:

(1) "Agreement", the agreement, between an employer and a junior college district, concerning a project. An agreement may be for a period not to exceed ten years when the program services associated with a project are not in excess of five hundred thousand dollars. For a project where associated program costs are greater than five hundred thousand dollars, the agreement may not exceed a period of eight years. No agreement shall be entered into between an employer and a community college district which involves the training of potential employees with the purpose of replacing or supplanting employees engaged in an authorized work stoppage;

(2) "Board of trustees", the board of trustees of a junior college district;

(3) "Certificate", industrial new jobs training certificates issued pursuant to section 178.895;

(4) "Date of commencement of the project", the date of the agreement;

(5) "Employee", the person employed in a new job;

(6) "Employer", the person providing new jobs in conjunction with a project;

(7) "Industry", a business located within the state of Missouri which enters into an agreement with a community college district and which is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excluding retail**[**, health, or professional**]** services. "Industry" does not include a business which closes or substantially reduces its operation in one area of the state and relocates substantially the same operation in another area of the state. This does not prohibit a business from expanding its operations in another area of the state provided that existing operations of a similar nature are not closed or substantially reduced;

(8) "New job", a job in a new or expanding industry not including jobs of recalled workers, or replacement jobs or other jobs that formerly existed in the industry in the state;

(9) "New jobs credit from withholding", the credit as provided in section 178.894;

(10) "New jobs training program" or "program", the project or projects established by a community college district for the creation of jobs by providing education and training of workers for new jobs for new or expanding industry in the state;

(11) "Program costs", all necessary and incidental costs of providing program services including payment of the principal of, premium, if any, and interest on certificates, including capitalized interest, issued to finance a project, funding and maintenance of a debt service reserve fund to secure such certificates and wages, salaries and benefits of employees participating in on-the-job training;

(12) "Program services" includes, but is not limited to, the following:

(a) New jobs training;

(b) Adult basic education and job-related instruction;

(c) Vocational and skill-assessment services and testing;

(d) Training facilities, equipment, materials, and supplies;

(e) On-the-job training;

(f) Administrative expenses equal to fifteen percent of the total training costs;

(g) Subcontracted services with state institutions of higher education, private colleges or universities, or other federal, state, or local agencies;

(h) Contracted or professional services; and

(i) Issuance of certificates;

(13) "Project", a training arrangement which is the subject of an agreement entered into between the community college district and an employer to provide program services;

(14) "Total training costs", costs of training, including supplies, wages and benefits of instructors, subcontracted services, on-the-job training, training facilities, equipment, skill assessment and all program services excluding issuance of certificates.

620.470. DEFINITIONS. — As used in sections 620.470 to 620.481, unless the context clearly requires otherwise, the following terms mean:

(1) "Department", the Missouri department of economic development;

(2) "Fund", the Missouri job development fund as established by section 620.478;

(3) "Industry", an entity the objective of which is to supply a service or the objective of which is the commercial production and sale of an article of trade or commerce**. The term includes a consortium of such entities organized for the purpose of providing for common training to the member entities' employees, provided that the consortium as a whole meets the requirements for participation in this program**;

(4) "Manufacturing", the making or processing of raw materials into a finished product, especially by means of large-scale machines of industry.

620.474. BASIC INDUSTRY RETRAINING PROGRAM, PURPOSE, FUNDING — QUALIFIED INDUSTRIES — RULES AND REGULATIONS, FACTORS TO BE CONSIDERED. — 1. The department shall establish a basic industry retraining program, the purpose of which is to provide assistance for industries in Missouri for the retraining and upgrading of employees' skills which are required to support new **[**capital**]** investment. Such program shall be operated with appropriations made by the general assembly from the fund.

2. Assistance under the basic industry retraining program may be made available for industries in Missouri which make new investments **[**in manufacturing**]** without the creation of new employment.

3. The department shall issue rules and regulations governing the awarding of funds administered through the basic industry retraining fund. When promulgating these rules and regulations, the department shall consider such factors as the number of jobs in jeopardy of being lost if retraining does not occur, the amount of private sector investment in new facilities and equipment, the ratio of jobs retained versus investment, the cost of normal, ongoing training required for the industry, the economic need of the affected community, and the importance of the industry to the economic development of Missouri.

Approved June 20, 2001

SB 514 [SCS SB 514]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Requires compliance with federal law in drug labeling.

AN ACT to repeal section 196.100, RSMo 2000, relating to labeling of drugs, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
196.100. When drug or device misbranded.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 196.100, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 196.100, to read as follows:

196.100. WHEN DRUG OR DEVICE MISBRANDED. — 1. **[**A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(a) The name and place of business of the manufacturer, packer, or distributor; and

(b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under paragraph (b) of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the department of health;

(3) If any word, statement, or other information required by or under authority of sections 196.010 to 196.120 to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the department after investigation, found to be, and by regulations under sections 196.010 to 196.120, designated as, habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — may be habit forming";

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:

(a) The common or usual name of the drug, if such there be; and

(b) In case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophantin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that to the extent that compliance with the requirements of paragraph (b) of this subdivision is impracticable, exemptions shall be established by regulations promulgated by the department of health;

(6) Unless its labeling bears:

(a) Adequate directions for use; and

(b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided, that where any requirement of paragraph (a) of this subdivision, as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements;

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided, that the method of packing may be modified with the consent of the department. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;

(8) If it has been found by the department to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the department shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;

(9) If it is a drug and its container is so made, formed, or filled as to be misleading; or if it is an imitation of another drug; or if it is offered for sale under the name of another drug;

(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(11) If it purports to be, or is represented as a drug composed wholly or in part of insulin, unless it is from a batch with respect to which a certificate or release has been issued pursuant to 21 U.S.C.A. 356 and, such certificate or release is in effect with respect to such drug.**] Any manufacturer, packer, distributor or seller of drugs or devices in this state shall comply with the current federal labeling requirements contained in the Federal Food, Drug and Cosmetic Act, as amended, and any federal regulations promulgated thereunder. Any drug or device which contains labeling that is not in compliance with the provisions of this section shall be deemed misbranded.**

2. A drug dispensed on a written prescription signed by a licensed physician, dentist, or veterinarian, except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to a diagnosis by mail, shall be exempt from the requirements of this section if such physician, dentist, or veterinarian is licensed by law to administer such drug, and such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian.

3. The department is hereby directed to promulgate regulations exempting from any labeling or packaging requirement of sections 196.010 to 196.120, drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such drugs and devices are not adulterated or misbranded under the provisions of said sections upon removal from such processing, labeling, or repacking establishment.

Approved June 7, 2001

SB 515 [HCS SCS SB 515]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Modifies requirements for items that are filed with the Recorder of Deeds.

AN ACT to repeal sections 59.310 and 59.313, RSMo 2000, relating to county recorders of deeds, and to enact in lieu thereof three new sections relating to the same subject, with an effective date.

SECTION
A. Enacting clause.
59.005. Definitions.
59.310. Documents for recording — page, defined — size of type or print — signature requirements — recorder's fee.
59.313. Recorder's fees (St. Louis City) — page, defined — size of type or print — signature requirements.
59.310. Documents for recording — page, defined — size of type or print — signature requirements.
59.313. Recorder's fees (St. Louis City) — page, defined — size of type or print — signature requirements.
B. Effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 59.310 and 59.313, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 59.005, 59.310 and 59.313, to read as follows:

59.005. DEFINITIONS. — As used in this chapter, unless the context clearly indicates otherwise, the following terms mean:

(1) "Document" or "instrument", any writing or drawing presented to the recorder of deeds for recording;

(2) "File", "filed" or "filing", the act of delivering or transmitting a document to the recorder of deeds for recording into the official public record;

(3) "Grantor" or "grantee", the names of the parties involved in the transaction used to create the recording index;

(4) "Legal description", includes but is not limited to the lot or parts thereof, block, plat or replat number, plat book and page and the name of any recorded plat or a metes and bounds description with acreage, if stated in the description, or the quarter/quarter section, and the section, township and range of property, or any combination thereof. The address of the property shall not be accepted as legal description;

(5) "Legible", all text, seals, drawings, signatures or other content within the document must be capable of producing a clear and readable image from record, regardless of the process used for recording;

(6) "Page", any writing, printing or drawing printed on one side only covering all or part of the page, not larger than eight and one-half inches in width and eleven inches in height for pages other than a plat or survey;

(7) "Record", "recorded" or "recording", the recording of a document into the official public record, regardless of the process used;

(8) "Recorder of deeds", the separate recorder of deeds in those counties where separate from the circuit clerk and the circuit clerk and ex officio recorder of deeds in those counties where the offices are combined.

59.310. DOCUMENTS FOR RECORDING — PAGE, DEFINED — SIZE OF TYPE OR PRINT — SIGNATURE REQUIREMENTS — RECORDER'S FEE. — 1. The county recorder of deeds may refuse any document presented for recording that does not meet the following requirements:

(1) The document shall consist of one or more individual pages printed only on one side and not permanently bound nor in a continuous form. The document shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements, provided that a document may be stapled together for presentation for recording; a label that is firmly attached with a bar code or return address may be accepted for recording;

(2) The size of print or type shall not be smaller than eight-point type and shall be in black or dark ink. Should any document presented for recording contain type smaller than eight-point type, such document shall be accompanied by an exact typewritten copy not smaller than eight-point type to be recorded contemporaneously as additional pages of the document;

(3) The document must be of sufficient legibility to produce a clear and legible reproduction thereof. Should any document not be of sufficient legibility to produce a clear and legible reproduction, such document shall be accompanied by an exact type-written copy not smaller than eight-point type to be recorded contemporaneously as additional pages of the document;

(4) The document shall be on white paper or light-colored of not less than twenty-pound weight without watermarks or other visible inclusions, except for plats and surveys, which may be on materials such as mylar or velum. All text within the document shall be of sufficient color and clarity to ensure that when the text is reproduced from record, it shall be readable;

(5) All signatures on a document shall be in black or dark ink, such that such signatures shall be of sufficient color and clarity to ensure that when the text is reproduced from record, it shall be readable, and shall have the corresponding name typed, printed or stamped underneath said signature. The typing or printing of any name or the applying of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document except where provided for by law;

(6) The documents shall have a top margin of at least three inches of vertical space from left to right, to be reserved for the recorder of deeds' certification and use. All other margins on the document shall be a minimum of three- fourths of one inch on all sides. Nonessential information such as form numbers, page numbers or customer notations may be placed in the margin. A document may be recorded if a minor portion of a seal or incidental writing extends beyond the margins. The recorder of deeds will not incur any liability for not showing any seal or information that extends beyond the margins of the permanent archival record.

2. Every document containing any of the items listed in this subsection that is presented for recording, except plats and surveys, shall have such information on the first page below the three-inch horizontal margin:

(1) The title of the document;

(2) The date of the document;

(3) All grantors' names;

(4) All grantees' names;

(5) Any statutory addresses;

(6) The legal description of the property; and

(7) Reference book and pages for statutory requirements, if applicable.

If there is not sufficient room on the first page for all of the information required by this subsection, the page reference within the document where the information is set out shall be stated on the first page.

3. From January 1, 2002, documents which do not meet the requirements set forth in this section may be recorded for an additional fee of twenty-five dollars, which shall be deposited in the recorders' fund established pursuant to subsection 1 of section 59.319.

4. Documents which are exempt from format requirements and which the recorder of deeds may record include the following:

(1) Documents which were signed prior to January 1, 2002;

(2) Military separation papers;

(3) Documents executed outside the United States;

(4) Certified copies of documents, including birth and death certificates;

(5) Any document where one of the original parties is deceased or otherwise incapacitated; and

(6) Judgments or other documents formatted to meet court requirements.

5. Any document rejected by a recorder of deeds shall be returned to the preparer or presenter accompanied by an explanation of the reason it could not be recorded.

6. Recorder of deeds shall be allowed fees for their services as follows:

(1) For recording every deed or instrument: five dollars for the first page and three dollars for each page thereafter except for plats and surveys;

(2) For copying or reproducing any recorded instrument, except surveys and plats: a fee not to exceed two dollars for the first page and one dollar for each page thereafter;

(3) For every certificate and seal, except when recording an instrument: one dollar;

(4) For recording a plat or survey of a subdivision, outlets or condominiums: twenty-five dollars for each sheet of drawings or calculations based on a size not to exceed twenty-four inches in width by eighteen inches in height. For recording a survey of one or more tracts: five dollars for each sheet of drawings or calculations based on a size not to exceed twenty-four inches in width by eighteen inches in height. Any plat or survey larger than eighteen inches by twenty-four inches shall be counted as an additional sheet for each additional eighteen inches by twenty-four inches, or fraction thereof, plus five dollars per page of other material;

(5) For copying a plat or survey of one or more tracts: a fee not to exceed five dollars for each sheet of drawings and calculations not larger than twenty-four inches in width and eighteen inches in height and one dollar for each page of other material;

(6) For a document which releases or assigns more than one item: five dollars for each item beyond one released or assigned in addition to any other charges which may apply;

(7) For every certified copy of a marriage license or application for a marriage license: two dollars;

(8) For duplicate copies of the records in a medium other than paper, the recorder of deeds shall set a reasonable fee not to exceed the costs associated with document search and duplication; and

(9) For all other use of equipment, personnel services and office facilities, the recorder of deeds may set a reasonable fee.

59.313. RECORDER'S FEES (ST. LOUIS CITY) — PAGE, DEFINED — SIZE OF TYPE OR PRINT — SIGNATURE REQUIREMENTS. — 1. The recorder of deeds in a city not within a county may refuse any document presented for recording that does not meet the following requirements:

(1) The document shall consist of one or more individual pages not permanently bound nor in a continuous form. The document shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements, provided that a document may be stapled together for presentation for recording; a label that is firmly attached with a bar code or return address may be accepted for recording;

(2) The size of print or type shall not be smaller than eight-point type and shall be in black or dark ink. Should any document presented for recording contain type smaller than eight-point type, such document shall be accompanied by an exact typewritten copy not smaller than eight-point type to be recorded contemporaneously as additional pages of the document;

(3) The document must be of sufficient legibility to produce a clear and legible reproduction thereof. Should any document not be of sufficient legibility to produce a clear and legible reproduction, such document shall be accompanied by an exact typewritten copy not smaller than eight-point type to be recorded contemporaneously as additional pages of the document;

(4) The document shall be on white or light-colored paper of not less than twenty-pound weight without watermarks or other visible inclusions, except for plats and surveys, which may be on materials such as mylar or velum. All text within the document shall be of sufficient color and clarity to ensure that when the text is reproduced from record, it shall be readable;

(5) All signatures on a document shall be in black or dark ink, such that such signatures shall be of sufficient color and clarity to ensure that when the text is reproduced from record, it shall be readable, and shall have the corresponding name typed, printed or stamped underneath said signature. The typing or printing of any name or the applying of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document, except where provided for by law;

(6) Every document, except plats and surveys, shall have a top margin of at least three inches of vertical space from left to right, to be reserved for the recorder of deeds' certification and use. All other margins on the document shall be a minimum of three-fourths of one inch on all sides. Nonessential information such as form numbers, page numbers or customer notations may be placed in the margin. A document may be recorded if a minor portion of a seal or incidental writing extends beyond the margins. The recorder of deeds will not incur any liability for not showing any seal or information that extends beyond the margins of the permanent archival record.

2. Every document containing any of the items listed in this subsection that is presented for recording, except plats and surveys, shall have such information on the first page below the three inch horizontal line:

(1) The title of the document;

(2) The date of the document;

(3) All grantors' names;

(4) All grantees' names;

(5) Any statutory addresses;

(6) The legal description or descriptions of the property; and

(7) Reference book and page for statutory requirements, if applicable.

If there is not sufficient room on the first page for all the required information, the page reference within the document where the information is set out shall be placed on the first page.

3. From January 1, 2002, documents which do not meet the requirements set forth in this section may be recorded for an additional fee of twenty-five dollars, which shall be deposited in the recorders' fund established pursuant to subsection 1 of section 59.319.

4. Documents which are exempt from format requirements and which the recorder of deeds may record include the following:

(1) Documents which were signed prior to January 1, 2002;

(2) Military separation papers;

(3) Documents executed outside the United States;

(4) Certified copies of documents, including birth and death certificates;

(5) Any document where one of the original parties is deceased or otherwise incapacitated; and

(6) Judgments or other documents formatted to meet court requirements.

5. Any document rejected by a recorder of deeds shall be returned to the preparer or presenter accompanied by an explanation of the reason it could not be recorded.

6. Recorder of deeds shall be allowed fees for their services as follows:

(1) For recording every deed or instrument: ten dollars for the first page and five dollars for each page thereafter;

(2) For copying or reproducing any recorded instrument, except surveys and plats: three dollars for the first page and two dollars for each page thereafter;

(3) For every certificate and seal, except when recording an instrument: two dollars;

(4) For recording a plat or survey of a subdivision, outlots or condominiums: forty-four dollars for each sheet of drawings and calculations based on a size of not to exceed twenty-four inches in width by eighteen inches in height, plus ten dollars for each page of other materials;

(5) For recording a survey of one tract of land, in the form of one sheet not to exceed twenty-four inches in width by eighteen inches in height: eight dollars;

(6) For copying a plat or survey: eight dollars for each page;

(7) For every certified copy of a marriage license or application for a marriage license: five dollars;

(8) For releasing on the margin: eight dollars for each item released;

(9) For a document which releases or assigns more than one item: seven dollars and fifty cents for each item beyond one released or assigned in addition to any other charges which may apply; and

(10) For duplicate reels of microfilm: thirty dollars each. For all other use of equipment, personnel services and office space the recorder of deeds shall set attendant fees.

[59.310. DOCUMENTS FOR RECORDING — PAGE, DEFINED — SIZE OF TYPE OR PRINT — SIGNATURE REQUIREMENTS. — 1. As used in this section, "page" means any writing, printing or drawing covering all or part of one side of a paper, other than a plat, not larger than 8 1/2 inches x 14 inches, or of a plat not larger than 18 inches x 24 inches, with the following conditions:

(1) Should sufficient space not be provided for the necessary recording information and certification on a document, said recording information and certification shall be placed on an added sheet and such sheet shall be counted as a page;

(2) The size of print or type on any document to be recorded shall not be smaller than 8 point. Should any document to be recorded contain type smaller than 8 point, such document must be accompanied by an exact typewritten copy thereof which will be recorded contemporaneously with the document;

(3) The document must be of sufficient legibility so as to produce a clear and legible reproduction thereof. Should a document not be of sufficient legibility so as to produce a clear and legible reproduction, such document must be accompanied by an exact typewritten copy thereof which will be recorded contemporaneously with the document;

(4) Any attachment which extends the length of the page, and any deed or document larger than 8 1/2 inches x 14 inches, other than a plat or survey, shall be counted as an additional page for each additional 8 1/2 inches x 14 inches or fraction thereof. Any plat or survey larger than 18 inches x 24 inches shall be counted as an additional page for each additional 18 inches x 24 inches or fraction thereof.

2. Any signature on a document shall have the corresponding name typed, printed or stamped underneath said signature.

3. Recorders shall be allowed fees for their services as follows:

(1) For recording every deed or instrument: $5.00 for the first page and $3.00 for each page thereafter;

(2) For copying or reproducing any recorded instrument except surveys or plats: a fee not to exceed $2.00 for the first page and $1.00 for every page thereafter;

(3) For every certificate and seal, except when recording an instrument: $1.00;

(4) For recording a plat or survey of a subdivision, outlots or condominiums: $25.00 for each page of drawings and calculations plus $5.00 for each page of other material;

(5) For recording a survey of one tract of land, in the form of one page: $5.00 per page;

(6) For copying a plat or survey: a fee not to exceed $5.00 for each page;

(7) For every certified copy of a marriage license or application for a marriage license: $2.00. The only additional fee over and above this is the $1.00 state user fee on all documents

that convey real estate, and a 25-cent fee for identifying each note to an instrument when a document is recorded that creates a lien against the real estate.**]**

[59.313. RECORDER'S FEES (ST. LOUIS CITY) — PAGE, DEFINED — SIZE OF TYPE OR PRINT — SIGNATURE REQUIREMENTS. — 1. As used in this section for recording in the office of the recorder of deeds of any city not within a county, "page" means any writing, printing or drawing covering all or part of one side of a paper, other than a plat not larger than 8 1/2 inches x 14 inches, or of a plat not larger than 18 x 24 inches, with the following conditions:

(1) Should sufficient space not be provided for the necessary recording information and certification on a document, said recording information and certification shall be placed on an added sheet and such sheet shall be counted as a page;

(2) The size of print or type on any document to be recorded shall not be smaller than 8 point. Should any document to be recorded contain type smaller than 8 point, such document must be accompanied by an exact typewritten copy thereof which will be recorded contemporaneously with the document. Such additional documents shall be recorded at the same cost as an original;

(3) The document must be of sufficient legibility so as to produce a clear and legible reproduction thereof. Should a document not be of sufficient legibility so as to produce a clear and legible reproduction, such document must be accompanied by an exact typewritten copy thereof which will be recorded contemporaneously with the document;

(4) Any attachment which extends the length of the page, and any deed or document larger than 8 1/2 inches x 14 inches, other than a plat or survey, shall be counted as an additional page for each additional 8 1/2 inches x 14 inches or fraction thereof. Any plat or survey larger than 18 inches x 24 inches shall be counted as an additional page for each additional 18 inches x 24 inches or fraction thereof.

2. Any signature on a document shall have the corresponding name typed, printed or stamped underneath the signature.

3. The recorder of deeds in any city not within a county shall be allowed fees for his services as follows:

(1) For recording every deed or instrument: $10.00 for the first page and $5.00 for each page thereafter;

(2) For copying or reproducing any recorded instrument, except surveys and plats: $3.00 for the first page and $2.00 for each page thereafter;

(3) For every certificate and seal, except when recording an instrument: $2.00;

(4) For recording a plat or survey of a subdivision, outlots or condominiums: $44.00 for each page of drawings and calculations plus $10.00 for each page of other materials;

(5) For recording a survey of one tract of land, in the form of one page: $8.00;

(6) For copying a plat or survey: $8.00 for each page;

(7) For every certified copy of a marriage license or application for a marriage license: $5.00;

(8) For releasing on the margin: $8.00 for each item released;

(9) For a document which releases or assigns more than one item: $7.50 for each item beyond one released or assigned in addition to any other charges which may apply; and

(10) For duplicate reels of microfilm: $30.00 each. For all other personnel services, use of equipment and use of office space the recorder of deeds shall set attendant fees.**]**

SECTION B. EFFECTIVE DATE. — The enactment of section 59.005 and the repeal and reenactment of sections 59.310 and 59.313 shall become effective January 1, 2002.

Approved July 13, 2001

SB 520 [HCS SCS SB 520]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Clarifies that the highest weight for a property-carrying local commercial vehicle is 72,001 - 80,000 pounds.

AN ACT to repeal sections 301.041, 301.057, 301.058 and 301.121, RSMo 2000, section 301.130 as enacted by house committee substitute for senate substitute for senate bill no. 3 and senate bill no. 156, eighty-eighth general assembly, first regular session, 301.130 as enacted by conference committee substitute for senate substitute for senate bill no. 70, eighty-eighth general assembly, first regular session, relating to motor vehicles, and to enact in lieu thereof five new sections relating to the same subject.

SECTION

A. Enacting clause.
301.041. Reciprocity agreement, registered commercial vehicles, annual registration — procedures — failure to display plates, penalty — director may promulgate rules — validity of previously issued plates.
301.057. Annual registration fee — property-carrying commercial vehicles — exemption.
301.058. Annual registration fees for local property-carrying commercial motor vehicles — exempt vehicles — improper registration, when, penalties.
301.121. Return of plates, partial refund.
301.130. License plates, required slogan and information — special plates — plates, how displayed — tabs to be used — rulemaking authority, procedure.
301.130. License plates, required slogan and information — special plates — plates, how displayed — tabs to be used — rulemaking authority, procedure.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 301.041, 301.057, 301.058 and 301.121, RSMo 2000, section 301.130 as enacted by house committee substitute for senate substitute for senate bill no. 3 and senate bill no. 156, eighty-eighth general assembly, first regular session, 301.130 as enacted by conference committee substitute for senate substitute for senate bill no. 70, eighty- eighth general assembly, first regular session, are repealed and five new sections enacted in lieu thereof, to be known as sections 301.041, 301.057, 301.058, 301.121 and 301.130, to read as follows:

301.041. RECIPROCITY AGREEMENT, REGISTERED COMMERCIAL VEHICLES, ANNUAL REGISTRATION — PROCEDURES — FAILURE TO DISPLAY PLATES, PENALTY — DIRECTOR MAY PROMULGATE RULES — VALIDITY OF PREVIOUSLY ISSUED PLATES. — 1. All commercial motor vehicles and trailers **registered pursuant to this section or** to be operated under agreements as provided for in sections 301.271 to 301.279 shall be registered annually.

2. An application for renewal registration **[**under**] pursuant to** this section shall be made with all required documents on or before October first of each year. Renewal applications received after October first shall be assessed a penalty of one hundred dollars. The director or his **or her** designee may waive the penalty **[**under**] pursuant to** this subsection for good cause.

3. Fees for commercial motor vehicles **and trailers** renewed **[**under**] pursuant to** this section shall be paid no later than December first of each year except for payments made on an installment basis as provided in subsection 4 of this section. Renewal application fees not paid by December first shall be assessed a penalty of fifty dollars per vehicle, but in no case shall such penalty exceed one hundred fifty dollars per application. The director or his **or her** designee may, for good cause, waive or reduce any penalties assessed **[**under**] pursuant to** this subsection.

4. Any owner of a commercial motor vehicle or trailer operated **[**under**] pursuant to this section or** agreements provided in sections 301.271 to 301.279 may elect to pay the **Missouri**

portion of the annual registration fee in two equal installments, except that no such installment shall be less than one hundred dollars. The first installment shall be payable on or before December first, and the second installment shall be payable on or before June first of that registration year. Every owner electing to pay on an installment basis shall file with the director of the department of revenue, on or before December first, a surety bond, certificate of deposit or irrevocable letter of credit as defined in section 400.5-103, RSMo, to guarantee the payment of the second installment. The bond or certificate or letter of credit shall be in an amount equal to the payment guaranteed.

5. If a new application for registration of a commercial vehicle **or trailer** is made other than as specified in subsection 1 of this section, the registration fee shall be prorated as follows:

(1) For applications made between April first and June thirtieth, the applicant shall pay three-fourths of the annual registration fee;

(2) For applications made between July first and September thirtieth, the applicant shall pay one-half of the annual registration fee; and

(3) For applications made after October first of the current registration year, the applicant shall pay one-fourth of the annual registration fee.

6. Any applicant who fails to timely renew his **or her** registration with all required documents **[**under**] pursuant to** this section or who fails to timely pay any fees and penalties owed **[**under**] pursuant to** this section shall not be issued a temporary registration **for a motor vehicle or a trailer issued pursuant to this section or** under agreements as provided for in sections 301.271 and 301.279. Nothing in this section shall prohibit the issuance of temporary registration credentials for additions to the registrant's fleet subsequent to renewal.

7. The applicant for registration **[**under**] pursuant to** this section shall affix the registration plate issued by the director to the front of the vehicle in accordance with the provisions of section 301.130. Any vehicle required to be registered **[**under**] pursuant to** this section shall display the plate issued to that vehicle no later than December thirty-first of each year. Failure to display the registration plates required by this section shall constitute a class A misdemeanor.

8. The director of revenue may prescribe rules and regulations for the effective administration of this section.

9. Any current registration or plate for which all fees have been paid for a commercial trailer previously issued pursuant to agreements provided for in sections 301.271 and 301.277 shall remain valid even if such agreements no longer require apportionment of such trailers under such agreements, and such trailers may continue to be registered pursuant to this section.

10. Notwithstanding any other law to the contrary, the highway reciprocity commission shall have the authority pursuant to this chapter to issue permanent and temporary registrations on commercial trailers whether or not the registration is issued pursuant to agreements as provided in sections 301.271 to 301.279. The provisions of subsection 1 of section 301.190 shall not apply to registrations issued pursuant to this subsection, provided the carrier or person to whom the registration is issued has at least one tractor as defined in section 301.010 registered with the state of Missouri pursuant to this section.

11. Commercial trailer plates issued pursuant to this section shall in all other respects conform to and have the same requirements as those issued pursuant to subsection 3 of section 301.067. Such plates may contain the legend "HRC TLR" in preference to the words "Show-Me State".

301.057. ANNUAL REGISTRATION FEE — PROPERTY-CARRYING COMMERCIAL VEHICLES — EXEMPTION. — The annual registration fee for property-carrying commercial motor vehicles, not including property-carrying local commercial motor vehicles, or land improvement contractors' commercial motor vehicles, based on gross weight is:

6,000 pounds and under	$ 25.50
6,001 pounds to 9,000 pounds	38.00
9,001 pounds to 12,000 pounds	38.00
12,001 pounds to 18,000 pounds	63.00
18,001 pounds to 24,000 pounds	100.50
24,001 pounds to 26,000 pounds	127.00
26,001 pounds to 30,000 pounds	180.00
30,001 pounds to 36,000 pounds	275.50
36,001 pounds to 42,000 pounds	413.00
42,001 pounds to 48,000 pounds	550.50
48,001 pounds to 54,000 pounds	688.00
54,001 pounds to 60,010 pounds	825.50
60,011 pounds to 66,000 pounds	1,100.50
66,001 pounds to 73,280 pounds	1,375.50
73,281 pounds to 78,000 pounds	1,650.50
[Over 78,000**] 78,001 to 80,000** pounds	1,719.50

301.058. ANNUAL REGISTRATION FEES FOR LOCAL PROPERTY-CARRYING COMMERCIAL MOTOR VEHICLES — EXEMPT VEHICLES — IMPROPER REGISTRATION, WHEN, PENALTIES. — 1. The annual registration fee for property-carrying local commercial motor vehicles, other than a land improvement contractors' commercial motor vehicles, based on gross weight is:

6,000 pounds and under	$ 15.50
6,001 pounds to 12,000 pounds	18.00
12,001 pounds to 18,000 pounds	20.50
18,001 pounds to 24,000 pounds	27.50
24,001 pounds to 26,000 pounds	33.50
26,001 pounds to 30,000 pounds	45.50
30,001 pounds to 36,000 pounds	67.50
36,001 pounds to 42,000 pounds	100.50
42,001 pounds to 48,000 pounds	135.50
48,001 pounds to 54,000 pounds	170.50
54,001 pounds to 60,010 pounds	200.50
60,011 pounds to 66,000 pounds	270.50
66,001 pounds to 72,000 pounds	335.50
[Over 72,000**] 72,001** pounds **to 80,000 pounds**	350.50

2. Any person found to have improperly registered a motor vehicle in excess of fifty-four thousand pounds when he **or she** was not entitled to shall be required to purchase the proper license plates and, in addition to all other penalties provided by law, shall be subject to the annual registration fee for the full calendar year for the vehicle's gross weight as prescribed in section 301.057.

301.121. RETURN OF PLATES, PARTIAL REFUND. — 1. When the owner of a commercial motor vehicle registered in excess of fifty-four thousand pounds returns the license plates to the director of revenue as provided in section 301.120, but not for a license suspension or revocation, **[**he**] the owner** shall receive a refund or credit of any pro rata amount to be determined by the calendar quarters remaining before expiration of the license plates. Such refund or credit shall be granted based upon the date the license plates are surrendered to the director of revenue. Any credit or refund may be applied toward any subsequent application for a Missouri registration only if a commercial motor vehicle. Any refunded portion of a registration fee which was distributed according to the provisions of article IV, section 30(b) of the Constitution of Missouri shall be refunded proportionately from state, city and county funds.

2. When the owner of a commercial motor vehicle registered in excess of fifty-four thousand pounds returns the license plate or plates to the appropriate official in the state where the license plate for the commercial motor vehicle was issued, a refund or credit shall be issued by the director of revenue as provided in subsection 1 of this section. **If the refund is to come from moneys previously transferred to another state by this state as a result of a reciprocity agreement, such refund by the director of revenue may only be made upon return of such moneys from that state to the director. If such moneys are not returned by that state, such refund will not be made.**

301.130. LICENSE PLATES, REQUIRED SLOGAN AND INFORMATION — SPECIAL PLATES — PLATES, HOW DISPLAYED — TABS TO BE USED — RULEMAKING AUTHORITY, PROCEDURE. — 1. The director of revenue, upon receipt of a proper application for registration, required fees and any other information which may be required by law, shall issue to the applicant a certificate of registration in such manner and form as the director of revenue may prescribe and a set of license plates, or other evidence of registration, as provided herein. Each set of license plates shall bear the name or abbreviated name of this state, the words "Show-Me State", the month and year in which the registration shall expire, and an arrangement of numbers or letters, or both, as shall be assigned from year to year by the director of revenue. Special plates for qualified disabled veterans will have the "DISABLED VETERAN" wording on the license plates in preference to the words "Show-Me State" and special plates for members of the national guard will have the "NATIONAL GUARD" wording in preference to the words "Show-Me State".

2. The arrangement of letters and numbers of license plates shall be uniform throughout each classification of registration.

3. The background of all license plates, or the letters and numerals thereof, shall be coated with a material which will reflect the lights of other vehicles. The nature and specifications of this material shall be determined after a public hearing by the director of revenue, director of prison industries, and superintendent of the state highway patrol, and shall meet the standards established by the state transportation department.

4. Figures on license plates, except those which may be used to designate gross weights for which commercial motor vehicles are registered, shall not be less than three inches in height and the strokes thereof not less than five-sixteenths of an inch in width. In the case of motorcycles and motortricycles, the letters and figures shall be not less than one inch in height and the strokes thereof one-eighth of an inch in width. The director may provide for the arrangement of the numbers in groups or otherwise, and for other distinguishing marks on the plates.

5. All property-carrying commercial motor vehicles to be registered at a gross weight in excess of twelve thousand pounds, all passenger-carrying commercial motor vehicles, local transit buses, school buses, trailers, semitrailers, motorcycles, motortricycles, motorscooters and driveaway vehicles shall be registered with the director of revenue as provided for in subsection 3 of section 301.030, but only one license plate shall be issued for each such vehicle.

6. The plates issued to manufacturers and dealers shall bear the letter "D" preceding the number, and the director may place upon the plates other letters or marks to distinguish commercial motor vehicles and trailers and other types of motor vehicles.

7. No motor vehicle or trailer shall be operated on any highway of this state unless it shall have displayed thereon the license plate or set of license plates issued by the director of revenue and authorized by section 301.140. Each such plate shall be securely fastened to the motor vehicle in a manner so that all parts thereof shall be plainly visible and reasonably clean so that the reflective qualities thereof are not impaired. License plates shall be fastened to all motor vehicles except trucks, tractors, truck tractors or truck-tractors licensed in excess of twelve thousand pounds on the front and rear of such vehicles not less than eight nor more than forty-eight inches above the ground, with the letters and numbers thereon right side up. The license plates on trailers, motorcycles, motortricycles and motorscooters shall be displayed on the

rear of such vehicles, with the letters and numbers thereon right side up. The license plate on trucks, tractors, truck tractors or truck-tractors licensed in excess of twelve thousand pounds shall be displayed on the front of such vehicles not less than eight nor more than forty-eight inches above the ground, with the letters and numbers thereon right side up. The license plate or plates authorized by section 301.140, when properly attached, shall be prima facie evidence that the required fees have been paid.

8. (1) The director of revenue shall issue annually a tab or set of tabs as evidence of the annual payment of registration fees and the current registration of a vehicle in lieu of the set of plates; except that the director shall annually issue a new license plate or set of plates as provided in this section for vehicles registered pursuant to subsection 2 of section 301.277, commercial motor vehicles in excess of twelve thousand pounds, trailers, buses and dealers.

(2) The vehicle owner to whom a tab or set of tabs is issued shall affix and display such tab or tabs on the middle of the license plate, no more than one per plate.

(3) A tab or set of tabs issued by the director when attached to a vehicle in the prescribed manner shall be prima facie evidence that the registration fee for such vehicle has been paid.

(4) Except as provided in subdivision (1) of this subsection, the director of revenue shall issue plates for a period of at least five years.

(5) For those commercial motor vehicles **and trailers** registered pursuant to **[**an agreement under section 301.277**] section 301.041**, the plate issued by the director of revenue shall be a permanent nonexpiring license plate for which no tabs shall be issued. Nothing in this section shall relieve the owner of any vehicle permanently registered **[**under**] pursuant to** this section from the obligation to pay the annual registration fee due for the vehicle. The permanent nonexpiring license plate shall be returned to the director of revenue upon the sale or disposal of the vehicle by the owner to whom the permanent nonexpiring license plate is issued, or the plate may be transferred to a replacement commercial motor vehicle when the owner files a supplemental application with the Missouri highway reciprocity commission for the registration of such replacement commercial motor vehicle. Upon payment of the annual registration fee, the director of revenue shall issue a certificate of registration or other suitable evidence of payment of the annual fee, and such evidence of payment shall be carried at all times in the vehicle for which it is issued.

(6) Upon the sale or disposal of any vehicle permanently registered under this section, or upon the termination of a lease of any such vehicle, the permanent nonexpiring plate issued for such vehicle shall be returned to the director and shall not be valid for operation of such vehicle, or the plate may be transferred to a replacement vehicle when the owner files a supplemental application with the Missouri highway reciprocity commission for the registration of such replacement vehicle. If a vehicle which is permanently registered under this section is sold, wrecked or otherwise disposed of, or the lease terminated, the registrant shall be given credit for any unused portion of the annual registration fee when the vehicle is replaced by the purchase or lease of another vehicle during the registration year.

9. The director of revenue may prescribe rules and regulations for the effective administration of this section. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

[301.130. LICENSE PLATES, REQUIRED SLOGAN AND INFORMATION — SPECIAL PLATES — PLATES, HOW DISPLAYED — TABS TO BE USED — RULEMAKING AUTHORITY, PROCEDURE. — 1. The director of revenue, upon receipt of a proper application for registration, required fees and any other information which may be required by law, shall issue to the applicant a certificate of registration in such manner and form as the director of revenue may prescribe and a set of license plates, or other evidence of registration, as provided in this section. Unless otherwise provided by law, each license plate or set of license plates issued, renewed or replaced on or after January 1, 1997, shall contain the following:

(1) The name or abbreviated name of this state;

(2) The words "Show-Me State";

(3) The month and year in which the registration shall expire;

(4) An arrangement of numbers or letters, or both, as shall be assigned from year to year by the director of revenue; and

(5) Fully reflective material with a common color scheme and design for each type of license plate issued under this chapter, which shall be designated by an advisory committee established in section 301.129. The license plates shall be clearly visible at night, and shall be aesthetically attractive. Except as otherwise provided in this section, in addition to all other fees required by law, applicants for registration of vehicles with license plates that expire between January 1, 1997, and December 31, 1997, applicants for registration of trailers or semitrailers with license plates that expire between January 1, 1997, and December 31, 1999, and applicants for registration of vehicles that are to be issued new license plates shall pay an additional fee of up to two dollars and twenty- five cents, based on the actual cost of the reissuance, to cover the cost of the fully reflective plates required by this subsection. Notwithstanding the provisions of subsection 3 of section 301.067 to the contrary, every license plate for a trailer or semitrailer which is permanently registered under subsection 3 of section 301.067 shall be returned to the director of revenue between January 1, 1997, and December 31, 1997, and a license plate which conforms to the provisions of this subsection issued as a replacement plate upon the payment of a one dollar and fifteen cent fee per plate prescribed by this subdivision. The additional fee, based on the actual cost, prescribed by this subdivision shall only be one dollar and fifteen cents for issuance of one new plate for vehicles requiring only one license plate pursuant to subsection 5 or 7 of this section. The additional fee of two dollars and twenty-five cents prescribed in this subsection shall not be charged to persons receiving special license plates issued under section 301.073 or 301.443. The department of revenue shall adopt a program whereby all motor vehicle registrations renewed on or after January 1, 1997, will have replacement reflective plates issued for such registration prior to January 1, 2000. Special plates for qualified disabled veterans will have the "DISABLED VETERAN" wording on the license plates in preference to the words "Show-Me State" and special plates for members of the national guard will have the "NATIONAL GUARD" wording in preference to the words "Show-Me State". Veterans' plates shall have a white background with a blue and red configuration at the discretion of the advisory committee established in section 301.129.

2. The arrangement of letters and numbers of license plates shall be uniform throughout each classification of registration.

3. The competitive bidding process used to select a vendor for the material to manufacture the license plates shall consider the aesthetic appearance of the plates and the reflective illumination capability for safety reasons. The advisory committee established in section 301.129 shall adopt specifications for all reflective material. The competitive bidding request for proposal shall contain a deduction in the amount of twenty-eight cents per plate from the cost of the reflective sheeting. The committee may select graphic designs or any of the plate processes approved on January 1, 1997.

4. Figures on license plates, except those which may be used to designate gross weights for which commercial motor vehicles are registered, shall be of a size set by the advisory committee established in section 301.129. In the case of motorcycles, motortricycles and trailers that are pulled by motorcycles or motortricycles, the letters and figures shall be of a size set by the advisory committee. The advisory committee may provide for the arrangement of the numbers in groups or otherwise, and for other distinguishing marks on the plates.

5. All property-carrying commercial motor vehicles to be registered at a gross weight in excess of twelve thousand pounds, all passenger- carrying commercial motor vehicles, local transit buses, school buses, trailers, semitrailers, motorcycles, motortricycles, motorscooters and driveaway vehicles shall be registered with the director of revenue as provided for in subsection 3 of section 301.030, but only one license plate shall be issued for each such vehicle, except as

provided in this subsection. The applicant for registration of any property-carrying commercial motor vehicle to be registered at a gross weight in excess of twelve thousand pounds or passenger-carrying commercial motor vehicle may request and be issued two license plates for such vehicle, and if such plates are issued, the director of revenue may assess and collect an additional charge from the applicant in an amount not to exceed the fee prescribed for personalized license plates in subsection 1 of section 301.144.

6. The plates issued to manufacturers and dealers shall bear the letter "D" preceding the number, and the advisory committee may require the placement upon the plates other letters or marks to distinguish commercial motor vehicles and trailers and other types of motor vehicles.

7. No motor vehicle or trailer shall be operated on any highway of this state unless it shall have displayed thereon the license plate or set of license plates issued by the director of revenue and authorized by section 301.140. Each such plate shall be securely fastened to the motor vehicle in a manner so that all parts thereof shall be plainly visible and reasonably clean so that the reflective qualities thereof are not impaired. License plates shall be fastened to all motor vehicles except trucks, tractors, truck tractors or truck-tractors licensed in excess of twelve thousand pounds on the front and rear of such vehicles not less than eight nor more than forty-eight inches above the ground, with the letters and numbers thereon right side up. The license plates on trailers, motorcycles, motortricycles and motorscooters shall be displayed on the rear of such vehicles, with the letters and numbers thereon right side up. The license plate on buses, other than school buses, and on trucks, tractors, truck tractors or truck-tractors licensed in excess of twelve thousand pounds shall be displayed on the front of such vehicles not less than eight nor more than forty-eight inches above the ground, with the letters and numbers thereon right side up, or if two plates are issued for the vehicle pursuant to subsection 5 of this section, displayed in the same manner on the front and rear of such vehicles. The license plate or plates authorized by section 301.140, when properly attached, shall be prima facie evidence that the required fees have been paid.

8. (1) The director of revenue shall issue annually a tab or set of tabs as evidence of the annual payment of registration fees and the current registration of a vehicle in lieu of the set of plates.

(2) The vehicle owner to whom a tab or set of tabs is issued shall affix and display such tab or tabs in the designated area of the license plate, no more than one per plate.

(3) A tab or set of tabs issued by the director when attached to a vehicle in the prescribed manner shall be prima facie evidence that the registration fee for such vehicle has been paid.

(4) Except as provided in subdivision (1) of this subsection, the director of revenue shall issue plates for a period of at least five years.

(5) For those commercial motor vehicles registered pursuant to an agreement under section 301.277, the plate issued by the director of revenue shall be a permanent nonexpiring license plate for which no tabs shall be issued. Nothing in this section shall relieve the owner of any vehicle permanently registered under this section from the obligation to pay the annual registration fee due for the vehicle. The permanent nonexpiring license plate shall be returned to the director of revenue upon the sale or disposal of the vehicle by the owner to whom the permanent nonexpiring license plate is issued, or the plate may be transferred to a replacement commercial motor vehicle when the owner files a supplemental application with the Missouri highway reciprocity commission for the registration of such replacement commercial motor vehicle. Upon payment of the annual registration fee, the director of revenue shall issue a certificate of registration or other suitable evidence of payment of the annual fee, and such evidence of payment shall be carried at all times in the vehicle for which it is issued.

(6) Upon the sale or disposal of any vehicle permanently registered under this section, or upon the termination of a lease of any such vehicle, the permanent nonexpiring plate issued for such vehicle shall be returned to the director and shall not be valid for operation of such vehicle, or the plate may be transferred to a replacement vehicle when the owner files a supplemental application with the Missouri highway reciprocity commission for the registration of such

replacement vehicle. If a vehicle which is permanently registered under this section is sold, wrecked or otherwise disposed of, or the lease terminated, the registrant shall be given credit for any unused portion of the annual registration fee when the vehicle is replaced by the purchase or lease of another vehicle during the registration year.

9. The director of revenue may prescribe rules and regulations for the effective administration of this section.

10. Any rule or portion of a rule promulgated pursuant to this section may be suspended by the joint committee on administrative rules if after hearing thereon the committee finds that such rule or portion of the rule is beyond or contrary to the statutory authority of the agency which promulgated the rule, or is inconsistent with the legislative intent of the authorizing statute. The general assembly may reinstate such rule by concurrent resolution signed by the governor.**]**

Approved July 13, 2001

SB 521 [HCS SB 521]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Clarifies duty of workers' compensation insurance carriers.

AN ACT to repeal section 287.123, RSMo 2000, relating to workers' compensation insurance carriers, and to enact in lieu thereof one new section relating to the same subject.

SECTION

A. Enacting clause.

287.123. Insurers to establish safety engineering and management services program — requirements — division to maintain registry.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 287.123, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 287.123, to read as follows:

287.123. INSURERS TO ESTABLISH SAFETY ENGINEERING AND MANAGEMENT SERVICES PROGRAM — REQUIREMENTS — DIVISION TO MAINTAIN REGISTRY. — 1. Each insurance carrier writing workers' compensation insurance in this state shall establish a program whereby the carrier shall have available and shall provide to each employer obtaining workers' compensation coverage from such insurance carrier comprehensive safety engineering and management services upon a request made by the employer for such services.

2. Each insurance carrier writing workers' compensation insurance in this state shall provide the director of the department of labor and industrial relations with a written outline of the safety engineering and management program required to be established under subsection 1 of this section. Such program **required to be established pursuant to subsection 1 of this section** shall require certification by the director as to its adequacy in providing safety management and loss control to the employer. An insurance carrier's program **required to be established pursuant to subsection 1 of this section** shall be reviewed by the director at least annually to determine that it is delivering comprehensive services for safety education and the elimination of and protection against unsafe acts in the workplace and frequently recognized compensable worker injuries. An insurance carrier may establish such program **required to be established pursuant to subsection 1 of this section** through contracts with private safety engineering and

management service companies in the state. Each insurance carrier shall collect annual data on what impact its program **required to be established pursuant to subsection 1 of this section** has had on compensable losses of the employers it insures, and such data shall be made available to the department of insurance and the department of labor and industrial relations. **When the employer requests services under such program and the insurance carrier provides such services, the insurance carrier shall report such services to the division.**

3. At each time the division of workers' compensation receives notice from an employer that the employer has purchased workers' compensation insurance coverage from a different insurance carrier or has made an initial purchase of workers' compensation coverage, the division shall notify the employer in writing of publicly or privately administered worker safety programs available in the state, unless such notice has been given in the prior twelve months.

4. The division shall maintain a registry of safety consultants and safety engineers certified by the department of labor and industrial relations and such registry shall be available for inspection by any employer in this state. Standards and requirements for certificates of safety consultants and safety engineers shall be determined by the department of labor and industrial relations by rule.

Approved July 10, 2001

SB 538 [HCS SB 538]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows residential mortgage brokers to post bond instead of providing annual audits.

AN ACT to repeal sections 443.803, 443.805, 443.809, 443.810, 443.812, 443.819, 443.821, 443.825, 443.827, 443.833, 443.839, 443.841, 443.849, 443.851, 443.855, 443.857, 443.859, 443.863, 443.867, 443.869, 443.879, 443.881 and 443.887, RSMo 2000, relating to mortgages and mortgage brokers, and to enact in lieu thereof twenty-three new sections relating to the same subject, with penalty provisions.

SECTION

A. Enacting clause.
443.803. Definitions.
443.805. License required to broker residential mortgage, exceptions.
443.809. Examination, powers of director to inspect records of unlicensed persons to determine licensing required.
443.810. Penalty for violations.
443.812. One license issued to each broker — record required of locations where any business is conducted.
443.819. Brokerage business to be operated under actual names of persons or corporations, violation, penalties.
443.821. License to be issued on completion of requirements — notice of denial of license to contain reasons — appeal procedure.
443.825. Application content, oath and form.
443.827. Applicant for license must agree to maintain certain requirements as to methods of conducting business.
443.833. Renewal of license, date, procedure, fee — failure to renew, license becomes inactive, reactivation — expires, when.
443.839. Application by licensee to open additional full-service offices, fee — certificate to be issued and posted.
443.841. License to be displayed — out-of-state to produce on request — license content.
443.849. Bonding requirements.
443.851. Audit required annually of licensee's books and accounts — scope of audit — filed with director, authority for rules — alternative to audit requirements.
443.855. Advertising policies to be established by director — standards required — other rules authorized.
443.857. Licensee shall maintain at least one full-service office with staff, duties to handle matters relating to mortgage.
443.859. Net worth requirement for licensees.

443.863. Unlawful discrimination for refusal to loan or vary terms of the loan.
443.867. Disclosure statement required of licensees, content — filed at time of application.
443.869. Powers and duties of director — rulemaking authority.
443.879. Reports required, failure to comply, penalty.
443.881. Suspension or revocation of license, grounds — procedure, penalties.
443.887. General rulemaking powers of director.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Sections 443.803, 443.805, 443.809, 443.810, 443.812, 443.819, 443.821, 443.825, 443.827, 443.833, 443.839, 443.841, 443.849, 443.851, 443.855, 443.857, 443.859, 443.863, 443.867, 443.869, 443.879, 443.881 and 443.887, RSMo 2000, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 443.803, 443.805, 443.809, 443.810, 443.812, 443.819, 443.821, 443.825, 443.827, 443.833, 443.839, 443.841, 443.849, 443.851, 443.855, 443.857, 443.859, 443.863, 443.867, 443.869, 443.879, 443.881 and 443.887, to read as follows:

443.803. DEFINITIONS. — 1. For the purposes of sections 443.800 to 443.893, the following terms mean:

(1) "Advertisement", the attempt by publication, dissemination or circulation to induce, directly or indirectly, any person to apply for a **[**residential mortgage**]** loan **[**application relative**]** to **[**a mortgage**] be** secured by residential real estate **[**situated in Missouri**];**

(2) "Affiliate":

(a) Any entity that directly controls, or is controlled by, the licensee and any other company that is directly affecting activities regulated by sections 443.800 to 443.893 that is controlled by the company that controls the licensee;

(b) Any entity:

a. That is controlled, directly or indirectly, by a trust or otherwise by, or for the benefit of, shareholders who beneficially, or otherwise, control, directly or indirectly, by trust or otherwise, the licensee or any company that controls the licensee; or

b. A majority of the directors or trustees of which constitute a majority of the persons holding any such office with the licensee or any company that controls the licensee;

(c) Any company, including a real estate investment trust, that is sponsored and advised on a contractual basis by the licensee or any subsidiary or affiliate of the licensee;

(3) "Annual audit", a certified audit of the licensee's books and records and systems of internal control performed by a certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards;

(4) "Board", the residential mortgage **[**licensing**]** board, created in section 443.816;

(5) "Borrower", the person or persons who use the services of a loan broker, originator or lender;

(6) "Director", the director of the division of finance within the department of economic development;

(7) "Escrow agent", a third party, individual or entity, charged with the fiduciary obligation for holding escrow funds on a residential mortgage loan pending final payout of those funds in accordance with the terms of the residential mortgage loan;

(8) "Exempt entity"**[**:

(a)**],** the following entities:

[a.**] (a)** Any **[**banking organization**] bank or trust company organized under the laws of this or any other state or any national bank** or **any** foreign banking corporation licensed by the division of finance or the United States Comptroller of the Currency to transact business in this state;

[b. Any national bank, federally chartered savings and loan association, federal savings bank or federal credit union;

c. Any pension trust, bank trust or bank trust company;

d.**]** **(b)** Any **state or federal** savings and loan association, savings bank or credit union **[**organized under the laws of this or any other state**]** or any consumer finance company licensed under sections 367.100 to 367.215, RSMo, **[**and sections 408.231 to 408.240, RSMo**] which is actively engaged in consumer credit lending**;

[e.**]** **(c)** Any insurance company authorized to transact business in this state;

[f.**]** **(d)** Any **[**entity**] person** engaged solely in commercial mortgage lending or any person **[**or entity**]** making or acquiring residential or commercial construction loans with the person's **[**or entity's**]** own funds for the person's **[**or entity's**]** own investment;

[g.**]** **(e)** Any service corporation of a **federally chartered or state chartered** savings and loan association **[**or**],** savings bank **[**organized under the laws of this state or the service corporation of a federally chartered savings and loan association or savings bank**]** or **[**any**]** credit union **[**association organized under the laws of this state or owned primarily by credit unions and subsidiaries of such credit union associations**]**;

[h.**]** **(f)** Any first-tier subsidiary of a **national or state** bank**[**, the charter of which is issued under the laws of this state by the board or the first-tier subsidiary of a bank chartered by the United States Comptroller of the Currency, the Federal Reserve Board or other appropriate federal regulatory agency and**]** that has its principal place of business in this state, provided that **[**the**] such** first-tier subsidiary is regularly examined by the division of finance or the Comptroller of the Currency or a consumer compliance examination **of it** is regularly conducted by the Federal Reserve **[**Board**]**;

[i.**]** **(g)** Any **[**entity**] person** engaged solely in the business of securing loans on the secondary market **provided such person does not make decisions about the extension of credit to the borrower**;

[j.**]** **(h)** Any mortgage banker as defined in subdivision (19) of this subsection; or

[k.**]** **(i)** Any wholesale mortgage lender who purchases mortgage loans originated by a licensee **provided such wholesale lender does not make decisions about the extension of credit to the borrower**;

[(b)**]** **(j)** Any person **[**or entity**]** making or acquiring residential mortgage loans with the person's **[**or entity's**]** own funds for the person's **[**or entity's**]** own investment;

[(c)**]** **(k)** Any person employed or contracted by a licensee to assist in the performance of the activities regulated by sections 443.800 to 443.893 who is compensated in any manner by only one licensee;

[(d)**]** **(l)** Any person licensed pursuant to the real estate agents and brokers licensing law, chapter 339, RSMo, who engages in servicing or the taking of applications and credit and appraisal information to forward to a licensee or an exempt entity **[**as defined in this subdivision under the provisions of sections 443.800 to 443.893**]** for transactions in which the licensee is acting as a real estate broker and who is compensated by either a licensee or an exempt entity **[**under the provisions of sections 443.800 to 443.893**]**;

[(e)**]** **(m)** Any **[**individual, corporation, partnership or other entity that**] person who** originates, services or brokers residential mortgagee loans**[**, as such activities are defined in sections 443.800 to 443.893,**]** and who receives no compensation for those activities, subject to the director's regulations regarding the nature and amount of compensation;

(9) "Financial institution", a savings and loan association, savings bank, credit union**, mortgage banker** or **[**a**]** bank organized under the laws of Missouri or **[**a savings and loan association, savings bank, credit union or a bank organized under**]** the laws of the United States with its principal place of business in Missouri;

(10) "First-tier subsidiary", as defined by administrative rule promulgated by the director;

(11) "Full-service office", office and staff in Missouri reasonably adequate to handle efficiently communications, questions and other matters relating to any application for a **new**, or **[**an**]** existing, home mortgage **[**secured by residential real estate situated in Missouri with

respect to**]** **loan** which the licensee is brokering, funding, originating, purchasing or servicing. The management and operation of each full-service office must include observance of good business practices such as adequate, organized and accurate books and records, ample phone lines, hours of business, staff training and supervision and provision for a mechanism to resolve consumer inquiries, complaints and problems. The director shall promulgate regulations with regard to the requirements of this subdivision and shall include an evaluation of compliance with this subdivision in the periodic examination of the licensee;

(12) "Government-insured mortgage loan", any mortgage loan made on the security of residential real estate insured by the Department of Housing and Urban Development or Farmers Home Loan Administration, or guaranteed by the Veterans Administration;

(13) "Lender", any person**[**, partnership, association, corporation or any other entity**]** who either lends **money for** or invests money in residential mortgage loans;

(14) "Licensee" or "residential mortgage licensee", a person**[**, partnership, association, corporation or any other entity**]** who**[**, or which,**]** is licensed **[**pursuant to sections 443.800 to 443.893**]** to engage in the activities regulated by sections 443.800 to 443.893;

(15) "Loan broker" or "broker", a person**[**, partnership, association or corporation, other than persons, partnerships, associations or corporations**]** exempted from licensing pursuant to subdivision (8) of this subsection, who performs the activities described in subdivisions (17) and (31) of this subsection;

(16) "Loan brokerage agreement", a written agreement in which a broker **[**or loan broker**]** agrees to do either of the following:

(a) Obtain a residential mortgage loan for the borrower or assist the borrower in obtaining a residential mortgage loan; or

(b) Consider making a residential mortgage loan to the borrower;

(17) "Loan brokering", "mortgage brokering", or "mortgage brokerage service", the act of helping to obtain for an investor **[**or other entity,**]** or from an investor **[**or other entity**]** for a borrower, a loan secured by residential real estate situated in Missouri or assisting an investor **[**or other entity**]** or a borrower in obtaining a loan secured by residential real estate **[**situated in Missouri**]** in return for consideration;

(18) "Making a residential mortgage loan" or "funding a residential mortgage loan", for compensation or gain, either, directly or indirectly, advancing funds or making a commitment to **[**advance funds to a loan**]** **an** applicant for a residential mortgage loan;

(19) "Mortgage banker", a mortgage loan company which is subject to licensing, supervision, or annual audit requirements by the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), or the United States Veterans Administration (VA), or the United States Department of Housing and Urban Development (HUD), or a successor of any of the foregoing agencies or entities, as an approved lender, loan correspondent, seller, or servicer;

(20) "Mortgage loan", "residential mortgage loan" **[**or "home mortgage loan"**]**, a loan to, or for the benefit of, any natural person made primarily for personal, family or household use, including a reverse mortgage loan, primarily secured by either a mortgage or reverse mortgage on residential real property or certificates of stock or other evidence of ownership interests in, and proprietary leases from, corporations or partnerships formed for the purpose of cooperative ownership of residential real property**[**, all located in Missouri**]**;

(21) "Net worth", as provided in section 443.859;

(22) "Originating", the advertising, soliciting, taking applications, processing, closing, or issuing of commitments for, and funding of, residential mortgage loans;

(23) "Party to a residential mortgage financing transaction", a borrower, lender or loan broker in a residential mortgage financing transaction;

(24) "Payments", payment of all, or any part of, the following: principal, interest and escrow reserves for taxes, insurance and other related reserves and reimbursement for lender advances;

(25) **"Person", any individual, firm, partnership, corporation, company or association and the legal successors thereof;**

(26) "Personal residence address", a street address, but shall not include a post office box number;

[(26)**] (27)** "Purchasing", the purchase of conventional or government- insured mortgage loans secured by residential real estate **[**situated in Missouri**]** from either the lender or from the secondary market;

[(27)**] (28)** "Residential mortgage board", the residential mortgage board created in section 443.816;

[(28)**] (29)** "Residential mortgage financing transaction", the negotiation, acquisition, sale or arrangement for, or the offer to negotiate, acquire, sell or arrange for, a residential mortgage loan or residential mortgage loan commitment;

[(29)**] (30)** "Residential mortgage loan commitment", a written conditional agreement to finance a residential mortgage loan;

[(30)**] (31)** "Residential real property" or "residential real estate", real property located in this state improved by a one-family to four-family dwelling;

[(31)**] (32)** "Servicing", the collection or remittance for, or the right or obligation to collect or remit for, any lender, noteowner, noteholder or for a licensee's own account, of payments, interests, principal and trust items such as hazard insurance and taxes on a residential mortgage loan **[**in accordance with the terms of the residential mortgage loans,**]** and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;

[(32)**] (33)** "Soliciting, processing, placing or negotiating a residential mortgage loan", for compensation or gain, either, directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the processing of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower including, but not limited to, the submission of credit packages for the approval of lenders, the preparation of residential mortgage loan closing documents, **and** including a closing in the name of a broker;

[(33)**] (34)** "Ultimate equitable owner", a person who, directly or indirectly, owns or controls an ownership interest in a corporation, foreign corporation, alien business organization, trust or any other form of business organization regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies or other entities or devices, or any combination thereof.

2. The director may define by **[**rules and regulations**] rule** any terms used in sections 443.800 to 443.893 for **[**the**]** efficient and clear administration **[**of sections 443.800 to 443.893**]**.

443.805. LICENSE REQUIRED TO BROKER RESIDENTIAL MORTGAGE, EXCEPTIONS. — 1. No person**[**, partnership, association, corporation or other entity**]** shall engage in the business of brokering, funding, originating, servicing or purchasing of residential mortgage loans **[**for property located in Missouri**]** without first obtaining a license from the director, pursuant to **[**the provisions of**]** sections 443.800 to 443.893 and the regulations promulgated thereunder. The licensing provisions of sections 443.805 to 443.812 shall not apply to any entity engaged solely in commercial mortgage lending or to any person**[**, partnership, association, corporation or other**]** exempt **[**entity**]** as provided in section 443.803 or pursuant to regulations promulgated as provided in sections 443.800 to 443.893.

2. No person**[**, partnership, association, corporation, or other entity**]** except a licensee**[**, licensed pursuant to sections 443.800 to 443.893,**]** or **[**an**] exempt** entity **[**exempt from licensing pursuant to section 443.803**]** shall do any business under any name or title or circulate or use any

advertising or make any representation or give any information to any person which indicates or reasonably implies activity within the scope of the provisions of sections 443.800 to 443.893.

443.809. EXAMINATION, POWERS OF DIRECTOR TO INSPECT RECORDS OF UNLICENSED PERSONS TO DETERMINE LICENSING REQUIRED. — When the director has reasonable cause to believe that any **[**entity which**]** **person** has not submitted an application for licensure **and** is conducting any of the activities described in subsection 1 of section 443.805, the director may examine all books and records of the **[**entity**]** **person** and any additional documentation necessary **[**in order**]** to determine whether such **[**entity**]** **person** is required to be licensed pursuant to **[**the provisions of**]** sections 443.800 to 443.893.

443.810. PENALTY FOR VIOLATIONS. — **[**Beginning one year after the rules and regulations promulgated by the director which establish the initial licensing procedures are adopted by the joint committee on administrative rules**]** **Effective May 21, 1998**, any person**[**, partnership, association, corporation or other entity**]** who violates any provision of sections 443.805 to 443.812 **[**is**]** **shall be deemed** guilty of a class C felony.

443.812. ONE LICENSE ISSUED TO EACH BROKER — RECORD REQUIRED OF LOCATIONS WHERE ANY BUSINESS IS CONDUCTED. — 1. Only one license shall be issued to each person**[**, partnership, association, corporation or other entity**]** conducting activities regulated by sections 443.800 to 443.893. A **[**residential mortgage**]** licensee shall **[**record**]** **register with the director** each office, place of business or location **[**at which a residential mortgage licensee**]** **where the licensee** conducts any part of **[**the entity's**]** **the licensee's** business **[**with the director**]** pursuant to **[**the provisions of**]** section 443.839.

2. Licensees **[**under the provisions of sections 443.800 to 443.893**]** may only solicit, broker, fund, originate, serve and purchase residential mortgage loans in conformance with **[**the provisions of**]** sections 443.800 to 443.893 and such rules **[**and regulations that**]** **as** may be promulgated by the director thereunder.

443.819. BROKERAGE BUSINESS TO BE OPERATED UNDER ACTUAL NAMES OF PERSONS OR CORPORATIONS, VIOLATION, PENALTIES. — 1. No person**[**, partnership, association, corporation or other entity**]** engaged in a business regulated by sections 443.800 to 443.893 shall operate such business under a name other than the real names of the **[**individuals**]** **persons** conducting such business, a corporate name adopted pursuant to chapter 351, RSMo, or a fictitious name registered with the secretary of state's office.

2. Any person who knowingly violates this section **[**is**]** **shall be deemed** guilty of a class A misdemeanor. A person who is convicted of a second or subsequent violation of this section **[**is**]** **shall be deemed** guilty of a class C felony.

443.821. LICENSE TO BE ISSUED ON COMPLETION OF REQUIREMENTS — NOTICE OF DENIAL OF LICENSE TO CONTAIN REASONS — APPEAL PROCEDURE. — The director shall issue a license upon completion of the following:

(1) The filing of an application **[**for license**]**;

(2) The filing with the director of a listing of judgments entered against, and bankruptcy petitions by, the **[**license**]** applicant for the preceding seven years;

(3) The payment of investigation and application fees to be established by administrative rule; and

(4) An investigation of the averments required by section 443.827, which investigation must allow the director to issue positive findings stating that the financial responsibility, experience, character and general fitness of the **[**license**]** applicant, and of the members thereof, if the **[**license**]** applicant is a partnership or association, and of the officers and directors thereof

if the **[**license**]** applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the scope of sections 443.800 to 443.893. If the director does not find the applicant's business and personal conduct warrants the issuance of a license, the director shall notify the **[**license**]** applicant of the denial with the reasons stated for such denial. An applicant may appeal such denial to the board.

443.825. APPLICATION CONTENT, OATH AND FORM. — 1. Application for a **[**residential mortgage**]** license shall be made as provided in sections 443.833 and 443.835. The application shall be in writing, made under oath, and on a form provided by the director.

2. The application shall contain the name and complete business and residential address or addresses of the **[**license**]** applicant. If the **[**license**]** applicant is a partnership, association, corporation or other form of business organization, the application shall contain the names and complete business and residential addresses of each member, director and principal officer of such entity. Such application shall also include a description of the activities of the **[**license**]** applicant, in such detail and for such periods as the **[**board**] director** may require, including all of the following:

(1) An affirmation of financial solvency noting such capitalization requirements as may be required by the director, and access to such credit as may be required by the director;

(2) An affirmation that the **[**license**]** applicant or the applicant's members, directors or principals, as may be appropriate, are at least eighteen years of age;

(3) Information as to the character, fitness, financial and business responsibility, background, experience and criminal records **[**if**] of** any:

(a) Person, entity or ultimate equitable owner that owns or controls, directly or indirectly, ten percent or more of any class of stock of the **[**license**]** applicant;

(b) Person, entity or ultimate equitable owner that is not a depository institution that lends, provides or infuses, directly or indirectly, in any way, funds to or into **[**a license**] an** applicant, in an amount equal to, or more than, ten percent of the **[**license**]** applicant's net worth;

(c) Person, entity or ultimate equitable owner that controls, directly or indirectly, the election of twenty-five percent or more of the members of the board of directors of **[**a license**] the** applicant; **[**or**] and**

(d) Person, entity or ultimate equitable owner that the director finds influences management of the **[**license**]** applicant.

443.827. APPLICANT FOR LICENSE MUST AGREE TO MAINTAIN CERTAIN REQUIREMENTS AS TO METHODS OF CONDUCTING BUSINESS. — Each **[**applicant for a license issued pursuant to sections 443.800 to 443.893**] application** shall be accompanied by **[**the following**] an** averment **[**stating**]** that the applicant:

(1) Will maintain at least one full-service office within the state of Missouri as provided in section 443.857;

(2) Will maintain staff reasonably adequate to meet the requirements of section 443.857;

(3) Will keep and maintain for thirty-six months the same written records as required by the federal Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., and any other information required by **[**regulations**] rules** of the director **[**regarding any home mortgage in the course of the conduct of the applicant's residential mortgage business**]**;

(4) Will **timely** file **[**with the director, when due,**]** any report **[**or reports which the applicant is**]** required **[**to file under any of**] pursuant to** sections 443.800 to 443.893;

(5) Will not engage, whether as principal or agent, in the practice of rejecting residential mortgage applications **[**without reasonable cause,**]** or varying terms or application procedures without reasonable cause, **[**for home mortgages**]** on real estate within any specific geographic area from the terms or procedures generally provided by the licensee within other geographic areas of the state;

(6) Will not engage in fraudulent home mortgage underwriting practices;

(7) Will not make payments, whether directly or indirectly, of any kind to any in-house or fee appraiser of any government or private money lending agency with which an application for a home mortgage has been filed for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by such home mortgage;

(8) Has filed tax returns, both state and federal, for the past three years or filed with the director a personal, an accountant's or attorney's statement as to why no return was filed;

(9) Will not engage in any **[**discriminating or redlining**]** activities prohibited by section 443.863;

(10) Will not knowingly misrepresent, circumvent or conceal**[**, through whatever subterfuge or device,**]** any **[**of the**]** material particulars**[**, or the nature thereof,**]** regarding a transaction to which the applicant is a party **[**which could injure another party to such transaction**]**;

(11) Will disburse funds in accordance with the applicant's agreements through a licensed and bonded disbursing agent or licensed real estate broker;

(12) Has not committed any crime against the laws of this state, or any other state or of the United States, involving moral turpitude, fraudulent or dishonest dealings and that no final judgment has been entered against the applicant in a civil action upon grounds of fraud, misrepresentation or deceit which has not been previously reported to the director;

(13) Will account **[**or**] for and** deliver to any person any personal property, including, but not limited to, money, funds, deposits, checks, drafts, mortgages**[**, any other document**]** or **any other** thing of value, which has come into the applicant's possession and which is not the applicant's property or which the applicant is not in law or equity entitled to retain under the circumstances, at the time which has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery;

(14) Has not engaged in any conduct which would be cause for denial of a license;

(15) Has not become insolvent;

(16) Has not submitted an application **[**for a license under the provisions of sections 443.800 to 443.893**]** which contains a material misstatement;

(17) Has not demonstrated **[**by a course of conduct,**]** negligence or incompetence in the performance of any activity **[**for which the applicant is**]** required to hold a license under sections 443.800 to 443.893;

(18) Will advise the director in writing of any changes to the information submitted on the most recent application for license within forty-five days of such change. The written notice must be signed in the same form as the application for the license being amended;

(19) Will comply with the provisions of sections 443.800 to 443.893, or with any lawful order**[**,**] or** rule **[**or regulation**]** made **[**or issued under the provisions of sections 443.800 to 443.893**] thereunder**;

(20) When probable cause exists, will submit to periodic examinations by the director as required by sections 443.800 to 443.893; and

(21) Will advise the director in writing of any judgments entered against, and bankruptcy petitions by, the license applicant within five days of the occurrence of the judgment or petition.

443.833. RENEWAL OF LICENSE, DATE, PROCEDURE, FEE — FAILURE TO RENEW, LICENSE BECOMES INACTIVE, REACTIVATION — EXPIRES, WHEN. — 1. Licenses **[**issued pursuant to sections 443.800 to 443.893**]** shall be renewed on the first anniversary of the date of issuance and every two years thereafter. **[**The applicant for renewal of a license issued pursuant to sections 443.800 to 443.893 shall complete a**]** Renewal application **[**form**] forms** and **[**submit the filing**]** fees **shall be submitted** to the director at least sixty days before the renewal date.

2. The director shall send **[**notices to the licensees of the renewal date of their license**] notice** at least ninety days before the licensee's renewal date, but failure to send or receive such

notice is no defense for failure to timely renew **[**a license issued pursuant to sections 443.800 to 443.893**]**, except **[**that, if the licensee requests**] when** an extension for good cause **[**and such extension**]** is granted by the director. If the director does not grant an extension and the licensee fails to submit a completed renewal application form and the proper fees in a timely manner, the director may assess additional fees as follows:

(1) A fee of five hundred dollars shall be assessed the licensee thirty days after the proper renewal date, and one thousand dollars each month thereafter, until the license is either renewed or expires pursuant to subsections 3 and 4 of this section;

(2) Such fee shall be assessed without prior notice to the licensee, but shall be assessed only in cases where the director **[**has in the director's possession**] possesses** documentation of the licensee's continuing activity for which the unrenewed license was issued.

3. A license which is not renewed by the date required in this section shall automatically become inactive. No activity regulated by sections 443.800 to 443.893 shall be conducted by the licensee when a license becomes inactive. An inactive license may be reactivated by filing a completed reactivation application with the director, payment of the renewal fee, and payment of a reactivation fee equal to the renewal fee.

4. A license which is not renewed within one year of becoming inactive shall expire.

443.839. APPLICATION BY LICENSEE TO OPEN ADDITIONAL FULL-SERVICE OFFICES, FEE — CERTIFICATE TO BE ISSUED AND POSTED. — 1. A licensee may apply for authority to open and maintain additional **[**full-service**]** offices **[**if the licensee**] by**:

(1) **[**Gives**] Giving** the director prior notice of the licensee's intention in such form as prescribed by the director;

(2) **[**Pays**] Paying** a fee to be established by the director by administrative rule.

2. Upon receipt of the notice and fee required by subsection 1 of this section, the director shall issue a certificate for the additional **[**full-service**]** office. The certificate shall be conspicuously displayed in the respective additional **[**full-service**]** office.

443.841. LICENSE TO BE DISPLAYED — OUT-OF-STATE TO PRODUCE ON REQUEST — LICENSE CONTENT. — The license **[**of a licensee whose principal place of business is within the state of Missouri or of an out-of-state licensee**]** shall be conspicuously displayed in every **Missouri** office **[**of the licensee located in Missouri. Out-of-state licensees without a Missouri office shall produce the license upon request**]**. The license shall state the full name and address of the licensee. The license shall not be transferable or assignable. A separate certificate shall be issued for display in each **[**full-service**]** Missouri office.

443.849. BONDING REQUIREMENTS. — **[**1. Any person who is licensed pursuant to the provisions of sections 443.800 to 443.893, if such person is appointed or elected to any position requiring the receipt of payment, management or use of any money belonging to a residential mortgage licensee engaged in the activities of originating, servicing or purchasing mortgage loans or whose duties permit such person to have access to, or custody of, any of the licensee's money or securities or custody of any money or securities belonging to third parties or whose duties permit such person to regularly make entries in the books or other records of a licensee, shall before assuming such person's duties, maintain a surety bond in the amount of twenty thousand dollars by a fidelity insurance company licensed to do business in this state or a letter of credit in such amount issued by a financial institution that is insured by the Federal Deposit Insurance Corporation.

2. Each bond shall be for any loss the licensee may sustain in money or other property through the commission of any dishonest or criminal act or omission by any person required to be bonded, whether committed alone or in concert with another. The bond shall be in the form and amount approved by the director. The director may at any time require a licensee to have one or more additional bonds. A true copy of every bond, including all riders and endorsements

executed subsequent to the effective date of the bond, shall be filed at all times with the director. Each bond shall provide that a cancellation thereof shall not become effective unless and until thirty days' notice, in writing, shall first be given to the director, unless the director had previously approved the cancellation. If the director believes the licensee's business is being conducted in an unsafe manner due to the lack of bonds or the inadequacy of bonds, the director may proceed against the licensee as provided in section 443.879.

3. All licensees shall maintain a bond in accordance with this section. Each bond shall be for the recovery of any expenses, damages or fees owed to, or levied by, the director in accordance with this section. The bond shall be payable when the licensee fails to comply with any provision of sections 443.800 to 443.893 and shall be in the form of a surety or licensure bond in the amount and form as prescribed by the director pursuant to rules and regulations. The bond shall be payable to the director and shall be issued by some insurance company authorized to do business in this state. A copy of the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the director within ten days of the execution thereof.

4. The director may promulgate rules with respect to bonding requirements for residential mortgage licenses as are reasonable and necessary to accomplish the purposes of sections 443.800 to 443.893.**] A corporate surety bond in the principal sum of twenty thousand dollars shall accompany each application for a license. The bond shall be in form satisfactory to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the applicant and the agents and subagents of the applicant in connection with the activities of originating, servicing or acquiring mortgage loans. An applicant or licensee may, in lieu of filing the bond required pursuant to this section, provide the director with a twenty thousand dollar irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any financial institution.**

443.851. AUDIT REQUIRED ANNUALLY OF LICENSEE'S BOOKS AND ACCOUNTS — SCOPE OF AUDIT — FILED WITH DIRECTOR, AUTHORITY FOR RULES — ALTERNATIVE TO AUDIT REQUIREMENTS. — 1. At the end of the licensee's fiscal year, but in no case more than twelve months after the last audit conducted pursuant to this section and section 443.853, each **[**residential mortgage**]** licensee shall cause the licensee's books and accounts to be audited by a certified public accountant not connected with such licensee. The books and records of all **[**persons licensed pursuant to sections 443.800 to 443.893**] licensees** shall be maintained on an accrual basis. The audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements in the report and must be performed in accordance with generally accepted accounting principles and generally accepted auditing standards.

2. As used in this section and section 443.853, the term "expression of opinion" includes either:

(1) An unqualified opinion;

(2) A qualified opinion;

(3) A disclaimer of opinion; or

(4) An adverse opinion.

3. If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons therefor shall be fully explained. An opinion, qualified as to a scope limitation, shall not be acceptable.

4. The audit report shall be filed with the director within one hundred twenty days of the audit date. The report filed with the director shall be certified by the certified public accountant conducting the audit. The director may promulgate rules regarding late audit reports.

5. As an alternative to the audit requirements of subsections 1 to 4 of this section, a licensee may post a corporate surety bond, in addition to that described in section 443.849, in the amount of one hundred thousand dollars. The bond shall be in form satisfactory

to the director and shall be issued by a bonding company or insurance company authorized to do business in this state, to secure the faithful performance of the obligations of the licensee, its agents and subagents in connection with the activities of originating, servicing or acquiring mortgage loans. A licensee may, in lieu of this bond, provide the director with a one hundred thousand dollar irrevocable letter of credit, as defined in section 400.5-103, RSMo, issued by any financial institution.

443.855. ADVERTISING POLICIES TO BE ESTABLISHED BY DIRECTOR — STANDARDS REQUIRED — OTHER RULES AUTHORIZED. — In addition to such other rules**[**, regulations and policies as**]** the director may promulgate to effectuate **[**the purpose of**]** sections 443.800 to 443.893, the director shall prescribe **[**regulations**] rules** governing the advertising of mortgage loans, including, without limitation, the following requirements:

(1) Advertising for loans transacted pursuant to the requirements of sections 443.800 to 443.893 may not be false, misleading or deceptive. No **[**entity**] person** whose activities are regulated pursuant to the provisions of sections 443.800 to 443.893 may advertise in any manner so as to indicate or imply that the **[**entity's**] person's** interest rates or charges for loans are in any way recommended, approved, set or established by the state or by the provisions of sections 443.800 to 443.893;

(2) All advertisements by a licensee shall contain the name and an office address of such entity, which shall conform to a name and address on record with the director**[**;

(3) No licensee shall advertise the licensee's services in Missouri in any medium, whether print or electronic, without the words "Missouri Residential Mortgage Licensee"**]**.

443.857. LICENSEE SHALL MAINTAIN AT LEAST ONE FULL-SERVICE OFFICE WITH STAFF, DUTIES TO HANDLE MATTERS RELATING TO MORTGAGE. — Each **[**residential mortgage**]** licensee shall maintain, in the state of Missouri, at least one full-service office with staff reasonably adequate to efficiently handle **[**communication, questions and**]** all **[**other**]** matters relating to any **proposed or** existing home mortgage with respect to which such licensee is performing services**[**, regardless of kind, for any borrower or lender, noteowner or noteholder or for himself or herself while engaged in the residential mortgage business**]**.

443.859. NET WORTH REQUIREMENT FOR LICENSEES. — **[**Beginning one year after the rules and regulations promulgated by the director which establish the initial licensing procedures are adopted by the joint committee on administrative rules**] Effective May 21, 1998**, every **[**residential mortgage**]** licensee shall have and maintain a net worth of not less than twenty-five thousand dollars. The director may promulgate rules with respect to net worth definitions and requirements for **[**residential mortgage**]** licensees as necessary to accomplish the purposes of sections 443.800 to 443.893. In lieu of the net worth requirement established by this section, the director may accept evidence of conformance by the licensee with the net worth requirements of the United States Department of Housing and Urban Development.

443.863. UNLAWFUL DISCRIMINATION FOR REFUSAL TO LOAN OR VARY TERMS OF THE LOAN. — It is **[**considered discriminatory**] unlawful discrimination** to refuse **[**to grant**]** loans or to vary the terms of loans or the application procedures for loans because of:

(1) **[**In the case of the proposed borrower, such**] The** borrower's race, color, religion, national origin, age, gender or marital status; or

(2) **[**In the case of a mortgage loan, solely**]** The geographic location of the proposed security.

443.867. DISCLOSURE STATEMENT REQUIRED OF LICENSEES, CONTENT — FILED AT TIME OF APPLICATION. — At the time of application **[**all**], each** residential mortgage **[**licensees

who are brokers**] licensee which is a broker** shall disclose, within the loan brokerage disclosure statement, that:

(1) The **[**licensees do**] licensee does** not make loans; and

(2) **[**That actual**] The** funds are provided by another **[**entity, and such entity**] person which** may affect availability of funds.

443.869. POWERS AND DUTIES OF DIRECTOR — RULEMAKING AUTHORITY. — 1. The functions, powers and duties of the director shall include the following:

(1) To issue or refuse to issue any license as provided in sections 443.800 to 443.893;

(2) To revoke or suspend for cause any license issued pursuant to sections 443.800 to 443.893;

(3) To keep records of all licenses issued pursuant to sections 443.800 to 443.893;

(4) To receive, consider, investigate and act upon complaints made by any person in connection with any residential mortgage licensee in this state;

(5) To consider and act upon any recommendations from the residential mortgage board;

(6) To prescribe the forms of and receive:

(a) Applications for licenses; and

(b) All reports and all books and records required to be made by any residential mortgage licensee pursuant to the provisions of sections 443.800 to 443.893, including annual audited financial statements;

(7) To adopt rules **[**and regulations**]** necessary and proper for the administration of sections 443.800 to 443.893;

(8) To subpoena documents and witnesses and compel their attendance and production, to administer oaths and to require the production of any books, papers or other material relevant to any inquiry authorized by sections 443.800 to 443.893;

(9) To require information with regard to any **[**license**]** applicant as the director may deem desirable, with due regard to the paramount interests of the public **[**as to**], about** the experience, background, honesty, truthfulness, integrity and competency of the **[**license**]** applicant **[**as to**] concerning** financial transactions involving primary or subordinate mortgage financing and where the **[**license**]** applicant is an entity other than an individual, as to the honesty, truthfulness, integrity and competency of any officer or director of the corporation, association or other entity or the members of a partnership;

(10) To examine the books and records of every **[**residential mortgage**]** licensee at intervals as provided by sections 443.800 to 443.893 and the rules promulgated thereunder;

(11) To enforce the provisions of sections 443.800 to 443.893;

(12) To levy fees and charges for services performed in administering the provisions of sections 443.800 to 443.893. The aggregate of all fees collected by the director shall be deposited promptly after receipt and accompanied by a detailed statement of such receipts in the residential mortgage licensing fund;

(13) To appoint a staff which may include an executive director, examiners, supervisors, experts, special assistants and any necessary support staff as needed to effectively and efficiently administer the provisions of sections 443.800 to 443.893; and

(14) To conduct hearings for such purposes as the director deems appropriate.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

443.879. REPORTS REQUIRED, FAILURE TO COMPLY, PENALTY. — 1. In addition to any reports required pursuant to sections 443.800 to 443.893, every **[**residential mortgage**]** licensee shall file such other reports as the director shall request.

2. Any licensee or any officer, director, employee or agent of any licensee who fails to file any reports required by sections 443.800 to 443.893**[**, including those required by subsection 1 of this section,**]** or who shall deliberately, willfully or knowingly make, subscribe to or cause to be made any false entry with intent to deceive the director or the director's appointees or who shall purposely cause **[**unreasonable**]** delay in filing such reports **[**is**]** **shall be deemed** guilty of a class A misdemeanor.

443.881. SUSPENSION OR REVOCATION OF LICENSE, GROUNDS — PROCEDURE, PENALTIES. — 1. Upon written notice to a **[**residential mortgage**]** licensee, the director may suspend or revoke any license issued pursuant to sections 443.800 to 443.893 if the director makes a finding of one or more of the following in the notice that:

(1) Through separate acts or an act or a course of conduct, the licensee has violated any provision of sections 443.800 to 443.893, any rule **[**or regulation**]** promulgated by the director or any other law**[**,**]** **or** rule **[**or regulation**]** of this state or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license would have warranted the director in refusing originally to issue such license;

(3) If a licensee is other than an individual, any ultimate equitable owner, officer, director or member of the licensed partnership, association, corporation or other entity has so acted or failed to act as would be cause for suspending or revoking a license to that party as an individual.

2. No license shall be suspended or revoked, except as provided in this section, nor shall any **[**residential mortgage**]** licensee be subject to any other disciplinary proceeding without notice of the licensee's right to a hearing as provided in sections 443.800 to 443.893.

3. The director, on good cause shown that an emergency exists, may suspend any license for a period not to exceed thirty days, pending an investigation.

4. The provisions of section 443.835 shall not affect a residential mortgage licensee's civil or criminal liability for acts committed before such licensee surrenders the **[**licensee's**]** license.

5. No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the **[**residential mortgage**]** licensee and any person.

6. Every license issued pursuant to sections 443.800 to 443.893 shall remain in force and effect until the license has expired without renewal, has been surrendered, revoked or suspended in accordance with the provisions of sections 443.800 to 443.893, except that, the director may reinstate a suspended license or issue a new license to a licensee whose license has been revoked if no fact or condition exists which would have warranted the director to refuse originally to issue such license pursuant to sections 443.800 to 443.893.

7. Whenever the director revokes or suspends a license issued pursuant to sections 443.800 to 443.893, the director shall execute in duplicate a written order to that effect. The director shall publish notice of such order in a newspaper of general circulation in the county in which the residential mortgage licensee's business is located and shall serve a copy of such order upon the licensee. Such order may be reviewed by the board.

8. When the director finds any person in violation of the grounds provided in subsection 9 of this section, the director may enter an order imposing one or more of the following disciplinary actions:

(1) Revocation of the license;

(2) Suspension of the license subject to reinstatement upon satisfying all reasonable conditions the director may specify;

(3) Placement of the **[**residential mortgage**]** licensee **[**or applicant**]** on probation for a period of time and subject to any reasonable conditions as the director may specify;

(4) Issuance of a reprimand; and

(5) Denial of a license.

9. The following acts shall constitute grounds for which the disciplinary actions specified in subsection 8 of this section may be taken:

(1) Being convicted or found guilty, regardless of pendency of an appeal, of a crime in any jurisdiction which involves fraud, dishonest dealings, or any other act involving moral turpitude;

(2) Fraud, misrepresentation, deceit or negligence in any mortgage financing transaction;

(3) A material or intentional misstatement of fact on an initial or renewal application;

(4) Failure to follow the director's **[**regulations**]** **rules** with respect to placement of funds in escrow accounts;

(5) Insolvency or filing under any provision of the United States Bankruptcy Code as a debtor;

(6) Failure to account or deliver to any person any property such as any money, funds, deposits, checks, drafts, mortgages or any other documents or things of value, which has come into the **[**person's hands**]** **licensee's possession** and which is not the person's property or which the **[**person**]** **licensee** is not in law or equity entitled to retain, under the circumstances and at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery;

(7) Failure to disburse funds in accordance with agreements;

(8) Any misuse, misapplication or misappropriation of trust funds or escrow funds;

(9) Having a license, or the equivalent, to practice any profession or occupation revoked, suspended or otherwise acted against, including the denial of licensure by a licensing authority of this state or another state, territory or country for fraud, dishonest dealings or any other act involving moral turpitude;

(10) Failure to issue a satisfaction of mortgage when the **[**residential**]** mortgage has been executed and proceeds were not disbursed to the benefit of the mortgagor and when the mortgagor has fully paid the **[**residential mortgage**]** licensee's costs and commission;

(11) Failure to comply with any order of the director or rule made or issued pursuant to the provisions of sections 443.800 to 443.893;

(12) Engaging in activities regulated by sections 443.800 to 443.893 without a current, active license unless specifically exempted by the provisions of sections 443.800 to 443.893;

(13) Failure to pay **[**in a**]** timely **[**manner**]** any fee or charge due under the provisions of sections 443.800 to 443.893;

(14) Failure to maintain, preserve and keep available for examination, all books, accounts or other documents required by the provisions of sections 443.800 to 443.893 and the rules of the director;

(15) Refusal to permit an investigation or examination of the licensee's or the licensee's affiliates' books and records or refusal to comply with the director's subpoena or subpoena duces tecum;

(16) A pattern of substantially underestimating **[**the maximum**]** closing costs;

(17) Failure to comply with, or any violation of, any provision of sections 443.800 to 443.893.

10. A licensee shall be subject to the disciplinary actions specified in sections 443.800 to 443.893 for a violation of subsection 9 of this section by any officer, director, shareholder, joint venture, partner, ultimate equitable owner or employee of the licensee.

11. Such licensee shall be subject to suspension or revocation for employee actions only if there is a pattern of repeated violations by **an employee or** employees or the licensee has knowledge of the violation.

12. The procedures for the surrender of a license shall be:

(1) The director may, after ten days' notice by certified mail to the licensee at the address set forth on the license, stating the contemplated action and, in general, the grounds for such action and the date, time and place of a hearing on the action, and after providing the licensee

with a reasonable opportunity to be heard prior to such action, revoke or suspend any license issued pursuant to sections 443.800 to 443.893 if the director finds that:

(a) The licensee has failed to comply with any provision of sections 443.800 to 443.893 or any order, decision, finding, rule**[**, regulation**]** or direction of the director lawfully made pursuant to the authority of sections 443.800 to 443.893; or

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the director to refuse to issue the license;

(2) Any licensee may surrender a license by delivering to the director written notice that the licensee thereby surrenders such license, but surrender shall not affect the licensee's civil or criminal liability for acts committed prior to surrender or entitle the licensee to a return of any part of the license fee.

443.887. GENERAL RULEMAKING POWERS OF DIRECTOR. — 1. In addition to such other powers as may be prescribed by sections 443.800 to 443.893, the director may promulgate **[**regulations**] rules** consistent with the purpose of sections 443.800 to 443.893, including, but not limited to:

(1) Such rules **[**and regulations**]** in connection with the activities of licensees as may be necessary and appropriate for the protection of consumers in this state;

(2) Such rules **[**and regulations**]** as may be necessary and appropriate to define improper or fraudulent business practices in connection with the activities of licensees **[**in making mortgage loans**]**;

(3) Such rules **[**and regulations**]** as may define the terms used in sections 443.800 to 443.893 and as may be necessary and appropriate to interpret and implement the provisions of sections 443.800 to 443.893; and

(4) Such rules **[**and regulations**]** as may be necessary for the enforcement of sections 443.800 to 443.893.

2. The director may make such specific ruling, demands and findings as the director may deem necessary for the proper conduct of the mortgage lending industry.

Approved July 10, 2001

SB 540 [SB 540]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Prohibits the Department of Revenue from collecting information which can individually identify a person.

AN ACT to repeal section 32.091, RSMo 2000, relating to motor vehicle records, and to enact in lieu thereof one new section relating to the same subject.

SECTION

A. Enacting clause.

32.091. Definitions — disclosure of individual motor vehicle records, when — certain disclosures prohibited without express consent — disclosure pursuant to United States law — disclosure for purposes of public safety — certain information not to be collected, when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 32.091, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 32.091, to read as follows:

32.091. DEFINITIONS — DISCLOSURE OF INDIVIDUAL MOTOR VEHICLE RECORDS, WHEN — CERTAIN DISCLOSURES PROHIBITED WITHOUT EXPRESS CONSENT — DISCLOSURE PURSUANT TO UNITED STATES LAW — DISCLOSURE FOR PURPOSES OF PUBLIC SAFETY — CERTAIN INFORMATION NOT TO BE COLLECTED, WHEN. — 1. As used in sections 32.090 and 32.091, the following terms mean:

(1) "Motor vehicle record", any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration or identification card issued by the department of revenue;

(2) "Person", an individual, organization or entity, but does not include a state or agency thereof;

(3) "Personal information", information that identifies an individual, including an individual's photograph, Social Security number, driver identification number, name, address, but not the five-digit zip code, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations and driver's status.

2. The department of revenue may disclose individual motor vehicle records pursuant to Section 2721(b)(11) of Title 18 of the United States Code and may disclose motor vehicle records in bulk pursuant to Section 2721(b)(12) of Title 18 of the United States Code, as amended by Public Law 106-69, Section 350, only if the department has obtained the express consent of the person to whom such personal information pertains.

3. Notwithstanding any other provisions of law to the contrary, the department of revenue shall not disseminate a person's driver's license photograph, Social Security number and medical or disability information from a motor vehicle record, as defined in Section 2725(1) of Title 18 of the United States Code without the express consent of the person to whom such information pertains, except for uses permitted under Sections 2721(b)(1), 2721(b)(4), 2721(b)(6) and 2721(b)(9) of Title 18 of the United States Code.

4. The department of revenue shall disclose any motor vehicle record or personal information permitted to be disclosed pursuant to Sections 2721(b)(1) to 2721(b)(10) and 2721(b)(13) to 2721(b)(14) of Title 18 of the United States Code except for the personal information described in subsection 3 of this section.

5. Pursuant to Section 2721(b)(14) of Title 18 of the United States Code, any person who has a purpose to disseminate to the public a newspaper, book, magazine, broadcast or other similar form of public communication, including dissemination by computer or other electronic means, may request the department to provide individual or bulk motor vehicle records, such dissemination being related to the operation of a motor vehicle or to public safety. Upon receipt of such request, the department shall release the requested motor vehicle records.

6. This section is not intended to limit media access to any personal information when such access is provided by agencies or entities in the interest of public safety and is otherwise authorized by law.

7. The department of revenue shall not collect from persons applying for any driver's license issued by the department any information by which such persons can be individually identified, unless the department has specific statutory authorization to collect such information; nor shall the department of revenue include on any driver's license, in print, magnetic, digital, or any other format, any information by which an individual may be identified, unless the department has specific statutory authorization to include such information.

Approved June 13, 2001

SB 543 [HCS SB 543]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows certain districts to transfer additional funds for capital purposes.

AN ACT to repeal section 165.011, RSMo 2000, relating to transfers of funds in certain school districts, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
165.011. Tuition — accounting of school moneys, funds — uses — transfers to and from incidental fund, when — effect of unlawful transfers — one-time transfer permitted, when.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 165.011, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 165.011, to read as follows:

165.011. TUITION — ACCOUNTING OF SCHOOL MONEYS, FUNDS — USES — TRANSFERS TO AND FROM INCIDENTAL FUND, WHEN — EFFECT OF UNLAWFUL TRANSFERS — ONE-TIME TRANSFER PERMITTED, WHEN. — 1. The following funds are created for the accounting of all school moneys: teachers' fund, incidental fund, free textbook fund, capital projects fund and debt service fund. The treasurer of the school district shall open an account for each fund specified in this section, and all moneys received from the county school fund and all moneys derived from taxation for teachers' wages shall be placed to the credit of the teachers' fund. All tuition fees, state moneys received under sections 162.975, RSMo, and 163.031, RSMo, and all other moneys received from the state except as herein provided shall be placed to the credit of the teachers' and incidental funds at the discretion of the district board of education. The portion of state aid received by the district pursuant to section 163.031, RSMo, based upon the portion of the tax rate in the debt service or capital projects fund, respectively, which is included in the operating levy for school purposes pursuant to section 163.011, RSMo, shall be placed to the credit of the debt service fund or capital projects fund, respectively. Money received from other districts for transportation and money derived from taxation for incidental expenses shall be credited to the incidental fund. Money apportioned for free textbooks shall be credited to the free textbook fund. All money derived from taxation or received from any other source for the erection of buildings or additions thereto and the remodeling or reconstruction of buildings and the furnishing thereof, for the payment of lease-purchase obligations, for the purchase of real estate, or from sale of real estate, schoolhouses or other buildings of any kind, or school furniture, from insurance, from sale of bonds other than refunding bonds shall be placed to the credit of the capital projects fund. All moneys derived from the sale or lease of sites, buildings, facilities, furnishings and equipment by a school district as authorized under section 177.088, RSMo, shall be credited to the capital projects fund. Money derived from taxation for the retirement of bonds and the payment of interest thereon shall be credited to the debt service fund which shall be maintained as a separate bank account. Receipts from delinquent taxes shall be allocated to the several funds on the same basis as receipts from current taxes, except that where the previous years' obligations of the district would be affected by such distribution, the delinquent taxes shall be distributed according to the tax levies made for the years in which the obligations were incurred. All refunds received shall be placed to the credit of the fund from which the original expenditures were made. Money donated to the school districts shall be placed to the credit of the fund where it can be expended to meet the purpose

for which it was donated and accepted. Money received from any other source whatsoever shall be placed to the credit of the fund or funds designated by the board.

2. **(1)** The school board may expend from the incidental fund the sum that is necessary for the ordinary repairs of school property and an amount not to exceed the sum of expenditures for classroom instructional capital outlay, as defined by the department of elementary and secondary education by rule, in state-approved area vocational-technical schools and **[**.06 dollars per one hundred dollars equalized assessed valuation multiplied by the guaranteed tax base for the second preceding year multiplied by the number of resident and nonresident eligible pupils educated in the district for the second preceding year**] the greater of twenty-five percent of the guaranteed tax base for the preceding year or two and one-fourth percent of the district's entitlement for the preceding school year as established pursuant to line 1 of subsection 6 of section 163.031, RSMo, as of June thirtieth of the preceding school year** for classroom instructional capital outlay, including but not limited to payments authorized pursuant to section 177.088, RSMo. Any and all payments authorized under section 177.088, RSMo, except as otherwise provided in this subsection, for the purchase or lease of sites, buildings, facilities, furnishings and equipment and all other expenditures for capital outlay shall be made from the capital projects fund. If a balance remains in the free textbook fund after books are furnished to pupils as provided in section 170.051, RSMo, it shall be transferred to the teachers' fund. The board may transfer the portion of the balance remaining in the incidental fund to the teachers' fund that is necessary for the total payment of all contracted obligations to teachers. If a balance remains in the debt service fund, after the total outstanding indebtedness for which the fund was levied is paid, the board may transfer the unexpended balance to the capital projects fund. If a balance remains in the bond proceeds after completion of the project for which the bonds were issued, the balance shall be transferred from the incidental or capital projects fund to the debt service fund. After making all placements of interest otherwise provided by law, a school district may transfer from the capital projects fund to the incidental fund the interest earned from undesignated balances in the capital projects fund. All other sections of the law notwithstanding, a school district may transfer from the incidental fund to the capital projects fund an amount equal to the capital expenditures for school safety and security purposes. A school district may borrow from one of the following funds: teachers' fund, incidental fund or capital projects fund, as necessary to meet obligations in another of those funds; provided that the full amount is repaid to the lending fund within the same fiscal year.

(2) No school district shall make any expenditure for any lease purchase obligation authorized pursuant to section 177.088, RSMo, and incurred on or after January 1, 1997, from the district's capital projects fund unless the district levies, in the current year, a tax rate in the capital projects fund which is sufficient to generate revenues equal to or greater than the amount of such expenditure and collects such revenues and credits such revenues to the capital projects fund. For the purposes of subsection 8 of this section, any expenditure made in violation of this subdivision shall be considered a transfer of funds performed in violation of this section and that amount shall be deducted from the school district's state aid calculated pursuant to section 163.031, RSMo, in the school year following the year such expenditure is made.

3. Tuition shall be paid from either the teachers' or incidental funds.

4. Other provisions of law to the contrary notwithstanding, the school board of a school district that satisfies the criteria specified in subsection 5 of this section may transfer from the incidental fund to the capital projects fund **[**an amount not to exceed the greater of zero or**]** the sum of **[**.18 dollars per one hundred dollars equalized assessed valuation multiplied by the guaranteed tax base for the second preceding year multiplied by the number of resident and nonresident eligible pupils educated in the district for the second preceding year and**]:**

(1) The amount to be expended for transportation equipment that is considered an allowable cost under state board of education rules for transportation reimbursements during the current year **[**and**]; plus**

(2) Any amount necessary to satisfy obligations of the capital projects fund for state-approved area vocational-technical schools **[**and**]: plus**

(3) An amount not to exceed **[**.06 dollars per one hundred dollars equalized assessed valuation multiplied by**] the greater of:**

(a) The guaranteed tax base for the **[**second**]** preceding year **[**multiplied by the number of resident and nonresident eligible pupils educated in the district for the second preceding year less any amount transferred pursuant to subsection 7 of this section, provided that any amount transferred pursuant to this subsection shall only be transferred as necessary to satisfy obligations of the capital projects fund less any amount expended from the incidental fund for classroom instructional capital outlay pursuant to subsection 2 of this section. For the purposes of this subsection, the guaranteed tax base and a district's count of resident and nonresident eligible pupils educated in the district shall not be less than their respective values calculated from data for the 1992-93 school year**]; or**

(b) Nine percent of the district's entitlement for the preceding school year as established pursuant to line 1 of subsection 6 of section 163.031, RSMo, as of June thirtieth of the preceding school year; provided that transfer amounts authorized pursuant to subdivision (3) of this subsection may only be transferred by a resolution of the school board approved by a majority of the board members in office when the resolution is voted upon and identifying the specific capital projects to be funded by the transferred funds and an estimated expenditure date; and provided that if a district did not maintain compliance with the requirements of section 165.016 the preceding year without recourse to a waiver for that year or a base year adjustment received that year or a fund balance exclusion unless the fund balance exclusion had also been used the second preceding year, the transfer amount pursuant to subdivision (3) of this subsection may be transferred only to the extent required to meet current year obligations of the capital projects fund.

5. In order to transfer funds pursuant to subsection 4 of this section, a school district shall:

(1) Meet the minimum criteria for state aid and for increases in state aid for the current year established pursuant to section 163.021, RSMo;

(2) Not incur a total debt, including short-term debt and bonded indebtedness in excess of **[**ten**] fifteen** percent of the guaranteed tax base for the preceding payment year multiplied by the number of resident and nonresident eligible pupils educated in the district in the preceding year;

(3) Set tax rates pursuant to section 164.011, RSMo;

(4) First apply any voluntary rollbacks or reductions to the total tax rate levied to the teachers' and incidental funds;

(5) In order to be eligible to transfer funds for paying lease purchase obligations:

(a) Incur such obligations, except for obligations for lease purchase for school buses, prior to January 1, 1997;

(b) Limit the term of such obligations to no more than twenty years;

(c) Limit annual installment payments on such obligations to an amount no greater than the amount of the payment for the first full year of the obligation, including all payments of principal and interest, except that the amount of the final payment shall be limited to an amount no greater than two times the amount of such first-year payment;

(d) Limit such payments to leasing nonathletic, classroom, instructional facilities as defined by the state board of education through rule; and

(e) Not offer instruction at a higher grade level than was offered by the district on July 12, 1994.

6. A school district shall be eligible to transfer funds pursuant to subsection 7 of this section if:

(1) Prior to August 28, 1993:

(a) The school district incurred an obligation for the purpose of funding payments under a lease purchase contract authorized under section 177.088, RSMo;

(b) The school district notified the appropriate local election official to place an issue before the voters of the district for the purpose of funding payments under a lease purchase contract authorized under section 177.088, RSMo; or

(c) An issue for funding payments under a lease purchase contract authorized under section 177.088, RSMo, was approved by the voters of the district; or

(2) Prior to November 1, 1993, a school board adopted a resolution authorizing an action necessary to comply with subsection 9 of section 177.088, RSMo. Any increase in the operating levy of a district above the 1993 tax rate resulting from passage of an issue described in paragraph (b) of subdivision (1) of this subsection shall be considered as part of the 1993 tax rate for the purposes of subsection 1 of section 164.011, RSMo.

7. Prior to transferring funds pursuant to subsection 4 of this section, a school district may transfer, pursuant to this subsection, from the incidental fund to the capital projects fund an amount as necessary to satisfy an obligation of the capital projects fund that satisfies at least one of the conditions specified in subsection 6 of this section, but not to exceed its payments authorized under section 177.088, RSMo, for the purchase or lease of sites, buildings, facilities, furnishings, equipment, and all other expenditures for capital outlay, plus the amount to be expended for transportation equipment that is considered an allowable cost under state board of education rules for transportation reimbursements during the current year plus any amount necessary to satisfy obligations of the capital projects fund for state-approved area vocational-technical schools. A school district with a levy for school purposes no greater than the minimum levy specified in section 163.021, RSMo, and an obligation in the capital projects fund that satisfies at least one of the conditions specified in subsection 6 of this section, may transfer from the incidental fund to the capital projects fund the amount necessary to meet the obligation plus the transfers pursuant to subsection 4 of this section.

8. Beginning in the 1995-96 school year, the department of elementary and secondary education shall deduct from a school district's state aid calculated pursuant to section 163.031, RSMo, an amount equal to the amount of any transfer of funds from the incidental fund to the capital projects fund performed during the previous year in violation of this section; except that the state aid shall be deducted in equal amounts over the five school years following the school year of an unlawful transfer provided that:

(1) The district shall provide written notice to the state board of education, no later than June first of the first school year following the school year of the unlawful transfer, stating the district's intention to comply with the provisions of subdivisions (1) to (4) of this subsection and have state aid deducted for that unlawful transfer over a five-year period;

(2) On or before September first of the second school year following the school year of the unlawful transfer, the district shall approve an increase to the district's operating levy for school purposes to the greater of: two dollars and seventy-five cents per one hundred dollars assessed valuation or the levy which produces an increase in total state and local revenues, as determined by the department, in comparison to the first school year following the school year of the unlawful transfer which is equal to or greater than the amount of state aid to be deducted pursuant to this subsection each school year for such unlawful transfer, provided that increases required pursuant to this subdivision for subsequent unlawful transfers shall be made in comparison to the latter tax rate described in this subdivision;

(3) During each school year after the school year in which the operating levy is increased pursuant to subdivision (2) of this subsection and in which state aid is deducted pursuant to subdivisions (1) to (4) of this subsection, the district shall maintain an operating levy for school purposes which produces total state and local revenues for the district which are no less than the total state and local revenues produced by the levy required pursuant to subdivision (2) of this subsection;

(4) During each school year state aid is deducted pursuant to subdivisions (1) to (4) of this subsection except for the 1998-99 school year, the district shall maintain compliance with the

requirements of section 165.016 without any recourse to waivers or base-year adjustments and without the option to demonstrate compliance based upon the district's fund balances; and

(5) If, in any school year state aid is deducted pursuant to subdivisions (1) to (4) of this subsection, the district fails to comply with any requirement of subdivisions (1) to (4) of this subsection, the full, remaining amount of state aid to be deducted pursuant to this subsection shall be deducted from the district's state aid payments by the department during such school year.

9. On or before June 30, 1999, a school district may transfer to the capital projects fund from the balances of the teachers' and incidental funds any amount, but only to the extent that the amount transferred is equal to or less than the amount that the teachers' and incidental funds' unrestricted balances on June 30, 1995, exceeded eight percent of expenditures from the teachers' and incidental funds for the year ending June 30, 1995.

10. (1) Other provisions of law to the contrary notwithstanding, a school district which satisfies all conditions specified in subdivision (2) of this subsection may make the transfer allowed in subdivision (3) of this subsection.

(2) To make the transfer allowed under subdivision (3) of this subsection, a school district shall:

(a) Have a membership count for school year 1997-98 which is at least sixteen percent greater than the district's membership count for the 1991-92 school year; and

(b) Have passed a full waiver of Proposition C tax rate rollback pursuant to section 164.013, RSMo, or approved an increase to the district's tax rate ceiling on or after June 1, 1994; and

(c) Be in compliance or have paid all penalties required pursuant to section 165.016 for the 1994-95, 1995-96 and 1996-97 school years without waiver or adjustment of the base school year certificated salary percentage; and

(d) After all transfers, have a remaining balance on June 30, 1998, in the combined teachers' and incidental funds which is no less than ten percent of the combined expenditures from those funds for the 1997-98 school year.

(3) A district which satisfies all of the criteria specified in paragraphs (a) to (d) of subdivision (2) of this subsection may, on or before June 30, 1998, make a one-time combined transfer from the teachers' and incidental funds to the capital projects fund of an amount no greater than the sum of the following amounts:

(a) The product of the district's equalized assessed valuation for 1994 times the difference of the district's equalized operating levy for school purposes for 1994 minus the district's equalized operating levy for school purposes for 1993;

(b) The product of the district's equalized assessed valuation for 1995 times the difference of the district's equalized operating levy for school purposes for 1995 minus the district's equalized operating levy for school purposes for 1993;

(c) The product of the district's equalized assessed valuation for 1996 times the difference of the district's equalized operating levy for school purposes for 1996 minus the district's equalized operating levy for school purposes for 1993;

(d) The product of the district's equalized assessed valuation for 1997 times the difference of the district's equalized operating levy for school purposes for 1997 minus the district's equalized operating levy for school purposes for 1993; provided that the remaining balance in the incidental fund shall be no less than twelve percent of the total expenditures during that fiscal year from the incidental fund.

(4) A district which makes a transfer pursuant to subdivision (3) of this subsection shall be subject to compliance with the requirements of section 165.016 for fiscal years 1999, 2000 and 2001, without the option to request a waiver or an adjustment of the base school year certificated salary percentage.

(5) Other provisions of section 165.016 to the contrary notwithstanding, the transfer of an amount of funds from either the teachers' or incidental funds to the capital projects fund pursuant to subdivision (3) of this subsection shall not be considered an expenditure from the teachers' or

incidental fund for the purpose of determining compliance with the provisions of subsections 1 and 2 of section 165.016.

11. In addition to other transfers authorized under subsections 1 to 9 of this section, a district may transfer from the teachers' and incidental funds to the capital projects fund the amount necessary to repay costs of one or more guaranteed energy savings performance contracts to renovate buildings in the school district; provided that the contract is only for energy conservation measures, as defined in section 640.651, RSMo, and provided that the contract specifies that no payment or total of payments shall be required from the school district until at least an equal total amount of energy and energy-related operating savings and payments from the vendor pursuant to the contract have been realized by the school district.

12. In addition to other transfers authorized pursuant to subsections 1 to 9 of this section, any school district that has undergone at least a twenty percent increase in assessed valuation from the preceding year because of the construction of a power plant may make a one-time transfer on the basis of each such increase, to the capital projects fund from the balances of the teachers' and incidental funds' unrestricted balances in an amount equal to twice the amount of such transfer otherwise permitted pursuant to this section for the year in which such one-time transfer is made; provided that such transfer shall be made prior to the end of the second fiscal year following the fiscal year in which the increase in assessed valuation is effective. Such one-time transfer may be made without regard to whether the transferred funds are used for current expenditures. No transfer shall be made pursuant to this subsection after June 30, 2003.

Approved June 27, 2001

SB 544 [HCS SB 544]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes the Missouri Veterans Commission to grant an easement to Spectra Communications.

AN ACT to authorize the conveyance of an easement on property owned by Missouri Veterans Commission to Spectra Communications.

SECTION

1. Easement to be granted by Missouri Veterans Commission to Spectra Communications Group of Kansas City.
2. Consideration for easement, contents of instrument.
3. Attorney general to approve the form of the easement instrument.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. EASEMENT TO BE GRANTED BY MISSOURI VETERANS COMMISSION TO SPECTRA COMMUNICATIONS GROUP OF KANSAS CITY. — The Missouri Veterans Commission is hereby authorized to grant an easement by appropriate instrument, as the Missouri Veterans Commission determines appropriate, to Spectra Communications Group of Kansas City. The easement is more particularly described as follows:
AN EASEMENT OVER AND ACROSS THE GRANTORS LAND SAID PORTION BEING A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 57 NORTH, RANGE 30 WEST, CLINTON COUNTY, MISSOURI.

COMMENCING AT AN EXISTING IRON PIN MARKING THE NORTHWEST CORNER OF A TRACT OF LAND RECORDED IN BOOK 372 PAGE 709 CLINTON COUNTY RECORDER'S OFFICE; THENCE S89°42'25"E, ALONG THE SOUTH RIGHT-OF-WAY LINE OF EUCLID STREET 42.97 FEET; THENCE S00°17'35"W, 13.12 FEET TO AN IRON PIN SET FOR THE POINT OF BEGINNING; THENCE S89°01'00"E, 30.00 FEET TO AN IRON PIN SET; THENCE S00°20'00"W, 30.00 FEET TO AN IRON PIN SET; THENCE N89°01'00"W, 30.00 FEET TO AN IRON PIN SET; THENCE N00°20'00"E, 30.00 FEET TO THE POINT OF BEGINNING, CONTAINING 900 SQUARE FEET.

SECTION 2. CONSIDERATION FOR EASEMENT, CONTENTS OF INSTRUMENT. — Consideration for the easement shall be as negotiated by the parties. The instrument of easement shall reserve a reversionary interest in the Missouri Veterans Commission if Spectra Communications Group of Kansas City ceases to use the property described in section 1 of this act. In addition, the instrument of the easement shall contain such other restrictions, reversionary clauses, and conditions as are deemed necessary by the Missouri Veterans Commission to protect the interest of the state.

SECTION 3. ATTORNEY GENERAL TO APPROVE THE FORM OF THE EASEMENT INSTRUMENT. — The attorney general shall approve as to form the instrument of easement.

Approved July 10, 2001

SB 553 [SB 553]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes Northwest Missouri State University to lease property to the City of Maryville and the Missouri National Guard.

AN ACT to authorize the conveyance of property interest owned by Northwest Missouri State University to the Missouri National Guard and City of Maryville.

SECTION

1. Lease agreement between Northwest Missouri State University and the Missouri national guard and the city of Maryville — duration and purpose of lease, description of property — attorney general to approve form of lease.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. LEASE AGREEMENT BETWEEN NORTHWEST MISSOURI STATE UNIVERSITY AND THE MISSOURI NATIONAL GUARD AND THE CITY OF MARYVILLE — DURATION AND PURPOSE OF LEASE, DESCRIPTION OF PROPERTY — ATTORNEY GENERAL TO APPROVE FORM OF LEASE. — 1. The board of regents of Northwest Missouri State University is hereby authorized to enter into a lease agreement with the Missouri National Guard and the City of Maryville for a period of fifty years, with the right of renewal of such lease. The purpose of the lease shall be to allow the Missouri National Guard and the City of Maryville to construct a National Guard Armory and City Activities Center.

2. The property subject to the lease is legally described as follows:

Commencing at the Northwest Corner Section 18, Township 64 North, Range 35 West, Nodaway County, Missouri; thence along Range Line, South 01 degrees 46 minutes

53 seconds West 598.36 feet to the Point of Beginning; thence departing from said line, South 88 degrees 13 minutes 07 seconds East 810.60 feet; thence South 01 degrees 46 minutes 53 seconds West 824.75 feet; thence North 88 degrees 13 minutes 07 seconds West 810.60 feet to Range Line; thence along Range Line, North 01 degrees 46 minutes 53 seconds East 824.76 feet to the point of beginning, containing 15.35 acres, more or less. Also, a sixty (60) feet wide roadway easement being thirty (30) feet right and thirty (30) feet left of the below described centerline: Commencing at the Northwest Corner of Section 18, Township 64 North, Range 35 West, Nodaway County, Missouri; thence along Range Line, South 01 degrees 46 minutes 53 seconds West 598.36 feet to the Northwest Corner of the above described 15.35 acre tract; thence along the North Line of said Tract, South 88 degrees 13 minutes 07 seconds East 570.16 feet to the Point of Beginning; thence along the centerline of said roadway running northwesterly, 43.86 feet by arc distance along a 287.94 feet radius curve to the left, thence North 15 degrees 53 minutes 17 seconds West 81.47 feet, thence northeasterly 228.12 feet by arc distance along a 287.94 feet radius curve to the right; thence North 29 degrees 30 minutes 19 seconds East 62.70 feet; thence northeasterly 145.59 feet by arc distance along a 287.94 feet radius curve to the left; thence North 00 degrees 32 minutes 06 seconds East 61.46 feet to the intersection of the North Line of the Northwest Quarter of said Section 18, being the point of termination.

3. The lease shall contain terms and conditions acceptable to the board of regents of Northwest Missouri State University, the Missouri National Guard and the City of Maryville.

4. The attorney general shall approve as to form the instrument of agreement.

Approved July 10, 2001

SB 556 [SB 556]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows Division of Liquor Control to issue microbrewing licenses to excursion gambling boats.

AN ACT to repeal section 313.840, RSMo 2000, relating to liquor licenses on boats and premises, and to enact in lieu thereof one new section relating to the same subject.

SECTION
A. Enacting clause.
313.840. Liquor licenses on boats and premises, commission to authorize — microbrewer's license issued, when — judicial review of all commission decisions, appeal.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 313.840, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 313.840, to read as follows:

313.840. LIQUOR LICENSES ON BOATS AND PREMISES, COMMISSION TO AUTHORIZE — MICROBREWER'S LICENSE ISSUED, WHEN — JUDICIAL REVIEW OF ALL COMMISSION DECISIONS, APPEAL. — 1. The conduct of or playing of any games on any licensed excursion gambling boat does not constitute gambling or gambling activities and the power of the division of liquor control to prohibit the licensing of any premises on which gambling or gambling

activities are conducted or played, or to prohibit the consumption or sale of beer or alcoholic beverage on any premises, shall not apply where the premises is duly licensed by the commission. Notwithstanding the provisions of chapter 311 or 312, RSMo, the commission shall be the sole liquor licensing authority for liquor service aboard any excursion gambling boat and any facility neighboring an excursion gambling boat which is owned and operated by an excursion gambling boat licensee. **The division of liquor control may issue a microbrewer's license pursuant to section 311.195 for manufacturing on the premises of such boat or neighboring facility.** The commission shall establish rules and regulations for the service of liquor on any premises licensed for the service of liquor by the commission, except that no rule or regulation adopted by the commission shall allow any person under the age of twenty-one to consume alcoholic beverages on any premises licensed for the service of liquor by the commission. All criminal provisions of chapter 311 or 312, RSMo, shall be applicable to liquor service aboard any premises licensed for the service of liquor by the commission.

2. Judicial review of all commission decisions relating to excursion gambling boat operations shall be directly to the state court of appeals for the western district of Missouri and shall not be subject to the provisions of chapter 621, RSMo.

Approved July 10, 2001

SB 568 [HCS SCS SB 568]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Authorizes a property exchange between the Natural Resources Department and the City of Lexington.

AN ACT to authorize the exchange of property interest owned by the state and certain cities.

SECTION

1. Conveyance of property by Missouri department of natural resources to city of Lexington.
2. Consideration for conveyance.
3. Attorney general to approve form of the instruments of conveyance.
4. Conveyance of property by Missouri national guard to city of Springfield.
5. Consideration for conveyance.
6. Attorney general to approve form of the instruments of conveyance.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. CONVEYANCE OF PROPERTY BY MISSOURI DEPARTMENT OF NATURAL RESOURCES TO CITY OF LEXINGTON. — The Missouri department of natural resources is hereby authorized to remise, release and forever quit claim the following described property to the City of Lexington, Missouri. The property to be conveyed is more particularly described as follows:

A tract of 16.3 acres of land in the central part of Section 28- 51-27. Tract lies South of and adjacent to the Missouri River and North of farm levee. More particularly described as: Beginning at an iron post at Point "A", said Point "A" is 1705.2 feet West and 2567.9 feet North of the Southeast corner of Section 28-51-27.

Thence, North 37°15' East 255.7 feet,

Thence, North 52°42' East 422.8 feet,

Thence, North 52°40' East 457.3 feet,

Thence, North 48°19' East 541.5 feet,

Thence, North 35°18' West 362.3 feet to a Point on the high bank of the Missouri River,

Thence, Southwest Following the South bank of the Missouri River approximately 2400 feet to a point.

Thence, South 39°15' East 180.0 feet to an iron rod at the North toe of farm levee, as now located.

Thence North 50°45' East 481.0 feet,

Thence North 33°53' East 199.1 feet to Point of Beginning.

Also, A 40 foot wide strip for roadway easement from the Missouri Pacific Railroad to the above tract of land described as:

Beginning at Point "A" as described above,

Thence, South 40°17' East 908.1 feet to the North Right of Way of Missouri Pacific Railroad,

Thence, North 40°12' East 74.95 Feet following The Railroad Right-of-Way,

Thence, North 52°20' West 153.3 feet,

Thence, North 40°17' West 746.3 feet to a point That is 40 feet Northeasterly of Point "A",

Thence, 40 feet southwesterly to Point "A", Point of Beginning.

SECTION 2. CONSIDERATION FOR CONVEYANCE. — In consideration for the conveyance in section 1 of this act, the City of Lexington is hereby authorized to remise, release and forever quit claim the following described property to the Missouri department of natural resources. The property to be conveyed is more particularly described as follows:

TRACT ONE:

Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6) in Block lettered "G" in Anderson's Addition to the City of Lexington, Missouri as said lots appear upon the plat of said addition of record in Plat Book 1, page 6, in the office of the Recorder of Deeds for Lafayette County, Missouri.

TRACT TWO:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), and Ten (10), in Block lettered "H" in Anderson's Addition to the City of Lexington, Missouri as said lots appear upon the plat of said addition of record in Plat Book 1, page 6, in the office of the Recorder of Deeds for Lafayette County, Missouri; Except that part thereof conveyed to the State of Missouri for highway purposes; Subject to sewer line easement granted to the City of Lexington, Missouri.

SECTION 3. ATTORNEY GENERAL TO APPROVE FORM OF THE INSTRUMENTS OF CONVEYANCE. — The attorney general shall approve as to form the instruments of conveyance.

SECTION 4. CONVEYANCE OF PROPERTY BY MISSOURI NATIONAL GUARD TO CITY OF SPRINGFIELD. — The Missouri national guard is hereby authorized to remise, release and forever quit claim the following described property to the city of Springfield, Missouri:

A portion of the Northeast Quarter of Section 18, Township 29 North, Range 21 West of the 5th Principal Meridian, City of Springfield and also being a portion of the tract of land as described in Quit Claim Deed recorded in Book 1091 at Page 632, Official Records of Greene County, Missouri and being more particularly described as follows:

Beginning at a point on the east right-of-way line of Fremont Street, said point being 524.70 feet south of the north line of the Northeast Quarter of said Section 18 and being the Southwest corner of Smith Park as described in Book 1091 at pages 71-73, Official

Records of Greene County, Missouri; thence South 88 39'20" East along the South line of Smith Park a distance of 405.00 feet; thence South 2 08'10" West a distance of 195.00 feet; thence North 88 39'20" West a distance of 405.00 feet to the east right-of-way line of Fremont Street; thence North 2 08'10" East along said right-of-way line a distance of 195.00 feet to the Point of Beginning.
The above described tract contains 1.81 Acres and is subject to any easements or restrictions of record.

SECTION 5. CONSIDERATION FOR CONVEYANCE. — In consideration for the conveyance in section 4 of this act, the city of Springfield is hereby authorized to remise, release and forever quit claim the following described property to the Missouri national guard:
A portion of the Northeast Quarter of Section 18, Township 29 North, Range 21 West of the 5th Principal Meridian, City of Springfield, Greene County, Missouri and described as follows: Commencing at a point on the east right-of-way line of Fremont Street, said point being 524.70 feet south of the north line of the Northeast Quarter of said Section 18 and being the Southwest corner of Smith Park as described in Book 1091 at pages 71-73, Official Records of Greene County, Missouri; thence South 88 39'20" East along the South line of Smith Park a distance of 405.00 feet to the Point of Beginning; thence North 2 08'10" East a distance of 117.30 feet; thence South 88 39'20" East a distance of 673.27 feet to the east line of Smith Park; thence South 2 08'10" West along said east line a distance of 117.30 feet to the southeast corner of Smith Park; thence North 88 39'20" West along the south line of Smith Park a distance of 673.27 feet to the Point of Beginning.
The above described tract contains 1.81 Acres and is subject to any easements or restrictions of record.

SECTION 6. ATTORNEY GENERAL TO APPROVE FORM OF THE INSTRUMENTS OF CONVEYANCE. — The attorney general shall approve as to form the instrument or instruments of conveyance.

Approved July 10, 2001

SB 575 [SB 575]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Revises public school reporting requirements.

AN ACT to repeal section 160.522, RSMo 2000, and to enact in lieu thereof one new section relating to building-level school accountability report cards.

SECTION
A. Enacting clause.
160.522. School accountability report card provided by school districts, distribution — standard form, contents — summary of accreditation, contents.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 160.522, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 160.522, to read as follows:

160.522. SCHOOL ACCOUNTABILITY REPORT CARD PROVIDED BY SCHOOL DISTRICTS, DISTRIBUTION — STANDARD FORM, CONTENTS — SUMMARY OF ACCREDITATION, CONTENTS. — 1. **[**The state board of education shall adopt a policy for the public reporting of information by school districts on an annual basis.**] School districts shall provide, at least annually, a school accountability report card for each school building to any household with a student enrolled in the district. Methods of distribution of the school accountability report card may include, but are not restricted to:**

(1) Distribution at the time and place of student enrollment;

(2) Inclusion with student grade reports;

(3) Newspaper publication;

(4) Posting by the school district by Internet or other electronic means generally accessible to the public; or

(5) Making copies available upon request at all school or administrative buildings in any school district.

The school district reports shall be distributed to all media outlets serving the district, and shall be made available**, upon request,** to all district patrons and to each member of the general assembly representing a legislative district which contains a portion of the school district.

2. The department of elementary and secondary education shall develop **[**multiple reporting models**] a standard form for the school accountability report card** which may be used by school districts **[**for their public reports**]**. The information reported shall include, but not be limited to, enrollment, rates of pupil attendance, high school dropout rate, the rates and durations of, and reasons for, suspensions of ten days or longer and expulsions of pupils, staffing ratios, including the district ratio of students to all teachers, to administrators, and to classroom teachers, the average years of experience of professional staff and advanced degrees earned, student achievement as determined through the assessment system developed pursuant to section 160.518, student scores on the SAT or ACT, **as appropriate,** along with the percentage of students taking each test, average teachers' and administrators' salaries compared to the state averages, average salaries of noncertificated personnel compared to state averages, average per pupil expenditures for the district as a whole and **[**for each building in the district which has pupils at the same grade level as another building in the district,**] by attendance center as reported to the department of elementary and secondary education,** voted and adjusted tax rates levied, assessed valuation, percent of the district operating budget received from state, federal, and local sources, **[**extracurricular activities offered and the costs associated with each activity,**]** the number of students eligible for free or reduced lunch, school calendar information, including **[**the number of**]** days **[**and hours for**] of** student attendance, parent-teacher conferences, and staff development or in-service training, data on course offerings and rates of participation in parent-teacher conferences, special education programs, early childhood special education programs, parents as teachers programs, vocational education programs, gifted or enrichment programs, and advanced placement programs, data on the number of students continuing their education in postsecondary programs and information about job placement for students who complete district vocational education programs, and the district's most recent accreditation by the state board of education, including measures for school improvement.

3. The public reporting shall permit the disclosure of data on a school-by-school basis, but the reporting shall not be personally identifiable to any student or education professional in the state.

4. The annual report made by the state board of education pursuant to section 161.092, RSMo, shall include a summary of school districts accredited, provisionally accredited, and unaccredited under the Missouri school improvement program, including an analysis of standards met and not met, and an analysis of state program assessment data collected pursuant to section 160.526, describing the kinds of tasks students can perform.

Approved June 14, 2001

SB 605 [SB 605]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Modifies law regarding licensing of surplus lines insurance.

AN ACT to repeal section 384.043, RSMo 2000, relating to surplus lines insurance, and to enact in lieu thereof one new section relating to the same subject.

SECTION

A. Enacting clause.
384.043. Licensing requirements for surplus lines brokers, fee — bond — examination, exception — renewal, when, violation, effect.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 384.043, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 384.043, to read as follows:

384.043. LICENSING REQUIREMENTS FOR SURPLUS LINES BROKERS, FEE — BOND — EXAMINATION, EXCEPTION — RENEWAL, WHEN, VIOLATION, EFFECT. — 1. No agent or broker **[**licensed by the state**]** shall procure any contract of surplus lines insurance with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued by the director.

2. The director shall issue a surplus lines license to any qualified **[**resident**]** holder of a current **resident or nonresident** property and casualty **[**broker's**]** license but only when the **[**broker**] licensee** has:

(1) Remitted the one hundred dollar initial fee to the director;

(2) Submitted a completed license application on a form supplied by the director;

(3) Passed a qualifying examination approved by the director, except that all holders of a license prior to July 1, 1987, shall be deemed to have passed such an examination; and

(4) Filed with the director, and maintains during the term of the license, in force and unimpaired, a bond in favor of this state in the penal sum of **[**ten**] one hundred** thousand dollars **or in a sum equal to the tax liability for the previous tax year, whichever is smaller**, aggregate liability, with corporate sureties approved by the director. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of sections 384.011 to 384.071 and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least thirty days' prior written notice is given to the licensee and director. **[**If the director determines that a surplus lines licensee of a reciprocal sister state is competent and trustworthy, then he may, in his discretion, issue a nonresident surplus lines agent's license. A nonresident licensee shall be limited in his authority to servicing of business negotiated elsewhere and filing any appropriate taxes. A nonresident licensee shall not solicit business.**]**

3. Each surplus lines license shall be renewed annually on the anniversary date of issuance and continue in effect until refused, revoked or suspended by the director in accordance with section 384.065; except that if the annual renewal fee for the license is not paid on or before the anniversary date the license terminates. The annual renewal fee is fifty dollars.

Approved July 12, 2001

SB 619 [HCS SCS SB 619]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Allows licensed ambulance service providers to provide services at state fair.

AN ACT to repeal section 190.109, RSMo 2000, and to enact in lieu thereof four new sections relating to the state fair, with an emergency clause.

SECTION

A. Enacting clause.
190.109. Ground ambulance license.
190.143. Temporary emergency medical technician license granted, when — limitations — expiration.
1. Easement granted by department of agriculture to city of Sedalia, description.
2. Attorney general to approve the form of the instrument of easement.
B. Emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION A. ENACTING CLAUSE. — Section 190.109, RSMo 2000, is repealed and four new sections enacted in lieu thereof, to be known as sections 190.109, 190.143, 1 and 2, to read as follows:

190.109. GROUND AMBULANCE LICENSE. — 1. The department shall, within a reasonable time after receipt of an application, cause such investigation as the department deems necessary to be made of the applicant for a ground ambulance license.

2. Any person that owned and operated a licensed ambulance on December 31, 1997, shall receive an ambulance service license from the department, unless suspended, revoked or terminated, for that ambulance service area which was, on December 31, 1997, described and filed with the department as the primary service area for its licensed ambulances on August 28, 1998, provided that the person makes application and adheres to the rules and regulations promulgated by the department pursuant to sections 190.001 to 190.245.

3. The department shall issue a new ground ambulance service license to an ambulance service that is not currently licensed by the department, or is currently licensed by the department and is seeking to expand its ambulance service area, except as provided in subsection 4 of this section, to be valid for a period of five years, unless suspended, revoked or terminated, when the director finds that the applicant meets the requirements of ambulance service licensure established pursuant to sections 190.100 to 190.245 and the rules adopted by the department pursuant to sections 190.001 to 190.245. In order to be considered for a new ambulance service license, an ambulance service shall submit to the department a letter of endorsement from each ambulance district or fire protection district that is authorized to provide ambulance service, or from each municipality not within an ambulance district or fire protection district that is authorized to provide ambulance service, in which the ambulance service proposes to operate. If an ambulance service proposes to operate in unincorporated portions of a county not within an ambulance district or fire protection district that is authorized to provide ambulance service, in order to be considered for a new ambulance service license, the ambulance service shall submit to the department a letter of endorsement from the county. Any letter of endorsement shall verify that the political subdivision has conducted a public hearing regarding the endorsement and that the governing body of the political subdivision has adopted a resolution approving the endorsement.

4. A contract between a political subdivision and a licensed ambulance service for the provision of ambulance services for that political subdivision shall expand, without further action by the department, the ambulance service area of the licensed ambulance service to include the

jurisdictional boundaries of the political subdivision. The termination of the aforementioned contract shall result in a reduction of the licensed ambulance service's ambulance service area by removing the geographic area of the political subdivision from its ambulance service area**, except that licensed ambulance service providers may provide ambulance services as are needed at and around the state fair grounds for protection of attendees at the state fair**.

5. The department shall renew a ground ambulance service license if the applicant meets the requirements established pursuant to sections 190.001 to 190.245, and the rules adopted by the department pursuant to sections 190.001 to 190.245.

6. The department shall promulgate rules relating to the requirements for a ground ambulance service license including, but not limited to:

(1) Vehicle design, specification, operation and maintenance standards;

(2) Equipment requirements;

(3) Staffing requirements;

(4) Five-year license renewal;

(5) Records and forms;

(6) Medical control plans;

(7) Medical director qualifications;

(8) Standards for medical communications;

(9) Memorandums of understanding with emergency medical response agencies that provide advanced life support;

(10) Quality improvement committees; and

(11) Response time, patient care and transportation standards.

7. Application for a ground ambulance service license shall be made upon such forms as prescribed by the department in rules adopted pursuant to sections 190.001 to 190.245. The application form shall contain such information as the department deems necessary to make a determination as to whether the ground ambulance service meets all the requirements of sections 190.001 to 190.245 and rules promulgated pursuant to sections 190.001 to 190.245.

190.143. TEMPORARY EMERGENCY MEDICAL TECHNICIAN LICENSE GRANTED, WHEN — LIMITATIONS — EXPIRATION. — 1. Notwithstanding any other provisions of law, the department may grant a ninety-day temporary emergency medical technician license to all levels of emergency medical technicians who meet the following:

(1) Can demonstrate that they have, or will have employment requiring an emergency medical technician license;

(2) Have been licensed as an emergency medical technician in Missouri and fingerprints need to be submitted to the Federal Bureau of Investigation to verify the existence or absence of a criminal history, or they are currently licensed and the license will expire before a verification can be completed of the existence or absence of a criminal history;

(3) Have submitted a complete application upon such forms as prescribed by the department in rules adopted pursuant to sections 190.001 to 190.245;

(4) Have not been disciplined pursuant to sections 190.001 to 190.245 and rules promulgated pursuant to sections 190.001 to 190.245;

(5) Meet all the requirements of rules promulgated pursuant to sections 190.001 to 190.245.

2. A temporary emergency medical technician license shall only authorize the license to practice while under the immediate supervision of a licensed emergency medical technician-basic, emergency medical technician-paramedic, registered nurse or physician who is currently licensed, without restrictions, to practice in Missouri.

3. A temporary emergency medical technician license shall automatically expire either ninety days from the date of issuance or upon the issuance of a five-year emergency medical technician license.

SECTION 1. EASEMENT GRANTED BY DEPARTMENT OF AGRICULTURE TO CITY OF SEDALIA, DESCRIPTION. — The Missouri department of agriculture is hereby authorized to grant an easement by appropriate instrument, the following described property to the city of Sedalia, Missouri. The property is more particularly described as follows:
A 60.0 FOOT RIGHT-OF-WAY FOR STREET PURPOSES LYING 30.0 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: BEGINNING AT A POINT 105.16 FEET NORTH OF AND 12.42 FEET EAST OF THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 8, IN TOWNSHIP 45 NORTH, OF RANGE 21 WEST OF THE FIFTH PRINCIPAL MERIDIAN, SEDALIA, PETTIS COUNTY, MISSOURI, SAID POINT BEING IN THE CENTERLINE OF CLARENDON ROAD; THENCE SOUTH 00°05'10" EAST, ALONG SAID CENTERLINE AND THE PROLONGATION OF SAID CENTERLINE, 762.86 FEET; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 302.0 FEET AN ARC DISTANCE OF 552.53 FEET; THENCE NORTH 75°05'20" EAST, 122.27 FEET; THENCE IN A SOUTHEASTERLY DIRECTION ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 119.0 FEET AN ARC DISTANCE OF 112.85 FEET TO A POINT ON THE NORTHERLY LINE OF KATY TRAIL STATE PARK, 43.87 FEET WESTERLY AS MEASURED ALONG SAID NORTHERLY LINE FROM THE CENTERLINE OF SAID CLARENDON ROAD IF EXTENDED NORTH AND THE TERMINATION OF SAID RIGHT-OF-WAY.

SECTION 2. ATTORNEY GENERAL TO APPROVE THE FORM OF THE INSTRUMENT OF EASEMENT. — The attorney general shall approve as to form the instrument of easement.

SECTION B. EMERGENCY CLAUSE. — Because of the need to ensure the safety of attendees at the state fair the repeal and reenactment of section 190.109 and the enactment of sections 1 and 2 of this act, is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 190.109 and the enactment of sections 1 and 2 of this act shall be in full force and effect upon its passage and approval.

Approved May 23, 2001

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